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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, 226, 235, 246, and 248

[FNS–2011–0031]

RIN 0584–AE20

Cooperation in USDA Studies and Evaluations, and Full Use of Federal Funds in Nutrition Assistance Programs Nondiscretionary Provisions of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296

AGENCY: Food and Nutrition Service (FNS), USDA

ACTION: Final rule.

SUMMARY: This final rule incorporates into the regulations governing the Programs authorized under the Richard B. Russell National School Lunch Act (NSLA) and the Child Nutrition Act of 1966 (CNA) two nondiscretionary provisions of the Healthy, Hunger-Free Kids Act of 2010 (HHFK Act). The HHFK Act requires State and local cooperation in Department of Agriculture studies and evaluations related to Programs authorized under the NSLA and the CNA. The HHFK Act also amends the NSLA to stipulate that Federal funds must not be subject to State budget restrictions or limitations, including hiring freezes, work furloughs, and travel restrictions. This final rule amends regulations for the National School Lunch Program; the Special Milk Program for Children; the School Breakfast Program; the Summer Food Service Program; the Child and Adult Care Food Program; State Administrative Expense Funds ; the Special Supplemental Nutrition Program for Women, Infants and Children; and the WIC Farmers' Market Nutrition Program.

These provisions will strengthen program integrity by ensuring that sufficient data is made available for studies and evaluations. Additionally, exempting Federal funds from State budgetary restrictions or limitations is intended to increase the ability of State agencies to administer USDA's nutrition assistance programs effectively.

DATES: *Effective Date:* This rulemaking becomes effective on July 29, 2011.

FOR FURTHER INFORMATION CONTACT: For more information contact Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302; (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

The Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, (the HHFK Act), was signed into law on December 13, 2010. The HHFK Act includes Section 305 and 361, which are nondiscretionary and directly affect a number of nutrition assistance programs authorized under the NSLA (42 U.S.C. 1751 *et seq.*) and the CNA (42 U.S.C. 1771 *et seq.),* including: The Special Supplemental Nutrition Program for Women, Infants and Children (WIC); the WIC Farmers' Market Nutrition Program (FMNP); the National School Lunch Program (NSLP); the School Breakfast Program (SBP); the Special Milk Program for Children (SMP); State Administrative Expense (SAE) Funds; the Summer Food Service Program (SFSP); and the Child and Adult Care Food Program (CACFP). The provisions of sections 305 and 361 also apply to the Fresh Fruit and Vegetable Program. Proposed regulations for that Program are expected to be issued shortly.

First, Section 305 of the HHFK Act added a new provision Section 28(c) of the NSLA, 42 U.S.C. 1760(c), requiring State and local entities and their contractors participating in the programs under the NSLA and the CNA to cooperate in studies and evaluations conducted by or on behalf of the Department of Agriculture (USDA) related to programs authorized under the NSLA or the CNA. USDA conducts studies related to Program operations in order to comply with existing laws or to provide Program information for program management and improvement. It is essential that such studies reflect an accurate portrait of these Programs on a Program-wide basis. In accordance with Section 445 of the HHFK Act, Section 305 became effective October 1, 2010, and has been implemented via memoranda to Child Nutrition, WIC, and FMNP State agencies, issued March, 2011. This rule amends 7 CFR 210.23(e), 215.7(f), 215.11(f), 220.7(g), 220.13(m), 225.18(j), 226.25(h), 246.26(k), and 248.24(d) to reflect this nondiscretionary statutory requirement.

Second, Section 361 of the HHFK Act amended Section 12(b) of the NSLA by establishing expectations for the use of Federal funds supporting the administration of Programs authorized under the NSLA and the CNA. Specifically, all agreements between FNS and a State agency to administer the Programs affected by this rule must include a provision that supports full use of Federal funds for the administration of the Programs and excludes such funds from State budget restrictions or limitations including, at a minimum, hiring freezes, work furloughs, and travel restrictions. Section 361 also became effective on October 1, 2010, in accordance with Section 445 of the HHFK Act and has been implemented via memoranda to all Child Nutrition, WIC, and FMNP State agencies.

In this final rule, the Department excludes from State budget restrictions State-imposed cost-saving measures of hiring freezes, work furloughs, and travel restrictions affecting USDA Programs under the NSLA and CNA. These limits are the exclusions specified in Section 361 of the HHFK Act. Should the Department determine that expansion of these restrictions is necessary to ensure the ability of State agencies to administer USDA's nutrition assistance Programs effectively, we will initiate a separate rulemaking process.

Because the Federal/State agreement for the Child Nutrition Programs is permanent, the amendment signed in FY 2011 conforms to the requirements of Section 361 for FY 2011 and all subsequent fiscal years. The Federal/State annual agreements for WIC and the FMNP were amended for FY 2011. FNS has begun revising the Federal/State Agreement forms for the WIC and FMNP to include the necessary statement related to the full use of Federal funds in accordance with

Section 361 of the HHFK Act. The revised form is expected to be ready for use for FY 2012. This rule amends 7 CFR 225.5(a)(5), 226.8(e), 235.6(i), 246.3(c)(3), and 248.3(c)(2) to reflect this requirement.

Notice and Comment

In accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined upon good cause that it is unnecessary to engage in the Notice and Comment provisions of 5 U.S.C. 553 normally required before the adoption of final regulations in an FNS-sponsored program. As indicated earlier, Sections 305 and 361 of the HHFK Act adopted as final rules in this rulemaking are nondiscretionary. These provisions are being incorporated as regulations using language taken verbatim from the Act. The nondiscretionary nature of Sections 305 and 361 means that notice and comment would serve no useful purpose in the promulgation of these regulations.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been designated a ''not significant regulatory action.'' Accordingly, the rule will not be reviewed by the Office of Management and Budget.

Regulatory Impact Analysis

This rule has been designated as non-significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act at 5 U.S.C. 601–612, FNS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule incorporates into the regulations governing the Programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966, as amended, two statutory provisions set forth in the Healthy, Hunger-Free Kids Act of 2010. The HHFK Act requires State and local cooperation in USDA studies and evaluations related to programs authorized under the NSLA and the CNA. The HHFK Act also amends the NSLA by stipulating that Federal funds available for Programs authorized in the NSLA and CNA must not be subject to State budget restrictions or limitations, including hiring freezes, work furloughs, and travel restrictions.

The provision implementing Section 305 is applicable to States, WIC and FMNP State agencies, State educational agencies, local educational agencies, local WIC and FMNP agencies, schools, institutions, facilities, and contractors; however, the provision simply requires cooperation with studies and evaluations and will not have a significant economic impact on affected parties. The provision implementing Section 361 are applicable to all State agencies, and, in the case of the WIC Program and the FMNP, local agencies that administer the Programs authorized under the NSLA or the CNA and will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

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

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The nutrition assistance programs affected by this rulemaking are listed in the Catalog of Federal Domestic Assistance as follows:

- WIC No. 10.557
- FMNP No. 10.572
- NSLP No. 10.555
- SBP No. 10.553
- SAE No. 10.560
- SMP No. 10.556
- CACFP No. 10.558
- SFSP No. 10.559

For the reasons set forth in the final rule at 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), these programs are included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section 6(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300–4, ''Civil Rights Impact Analysis,'' and 1512–1, ''Regulatory Decision Making Requirements.'' After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability, nor is it intended to have a differential impact on minority-owned or operated business

establishments, and woman-owned or operated business establishments that participate in the Programs affected by this rulemaking.

Federal WIC regulations specifically prohibit State agencies that administer the WIC Program, and their cooperators, from engaging in actions that discriminate against any individual in any of the protected classes (see 7 CFR 246.8 for the nondiscrimination policy in the WIC Program; 7 CFR 248.7 for the nondiscrimination policy in the FMNP).

In the NSLP, the regulation in 7 CFR 210.23(b) seeks to ensure non-discrimination in the operation of the school meals programs by prohibiting the denial of meal benefits to any child because of race, color, national origin, age, sex, or disability. It also requires State agencies and school food authorities to comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a, and 15b); and FNS Instruction 113–6. Other regulatory provisions (7 CFR 210.9(b)(11), 7 CFR 210.18(h)(1)(iii), 7 CFR 220.7(e)(5), 7 CFR 220.7(e)(15), and 7 CFR 220.13(f)(4)) also require nondiscrimination in the operation of the lunch and breakfast programs or refer to the Department's nondiscrimination regulations (7 CFR part 15b).

In the Special Milk Program, 7 CFR 215.13a(d)(5) requires program operators to have a free milk policy statement that includes an assurance that there will be no discrimination against free milk recipients and no discrimination against any child on the basis of race, color, or national origin. In addition, 7 CFR 215.14 requires that the school food authority's agreement with the State agency contain the assurances required by Department's regulations on nondiscrimination (7 CFR part 15b). Other regulatory provisions (7 CFR 215.7(d)(3), 215.11(b)(2)) also require nondiscrimination in the operation of the milk program or refer to the Department's nondiscrimination regulations (7 CFR part 15b).

In the SFSP, the regulations at 7 CFR 225.7(g)(1) require institutions to agree to operate the Program in compliance with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a and 15b). At 7 CFR 225.6(c)(4)(i), each sponsor applying to participate in the SFSP must submit a statement of nondiscrimination in its policy for serving meals to children.

In the CACFP, the regulations at 7 CFR 226.6(b)(4)(iv) require that sponsors comply with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a and 15b).

The provisions in this rule have no direct impact upon or involvement with Program participants.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. In early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these consultations will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country.

We are not aware of any current Tribal laws that could be in conflict with this final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This final rule has no new information collection requirements. The information collection burdens associated with the signing of Federal-State agreements in this final rule have been previously approved under OMB No. 0584–0332, Form FNS–339, Federal-State Supplemental Nutrition Programs Agreement, and OMB No. 0584–0006, 0584–0005, 0584–0012, 0584–0280, 0584–0055, 0584–0067, Form FNS–74. The information collection burdens associated with participating in a study or an evaluation will be covered under separate Information Collection Packages that are specific to a particular study or evaluation that will be submitted to OMB for approval.

E-Government Act Compliance

FNS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities to provide for citizen access to government information and services, and for other purposes. Also, State agencies may provide Program information, as well as their financial reports, to FNS electronically.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 225

Food assistance programs, Grant programs health, Infants and children, Labeling, Reporting.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and

recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 235

Administrative practice and procedure, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Nutrition education, Public assistance programs, WIC.

7 CFR Part 248

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR parts 210, 215, 220, 225, 226, 235, 246 and 248 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. Section 210.23 is amended to add a new paragraph (e) as follows:

§ 210.23 Other responsibilities.

* * * * *

(e) *Program evaluations.* States, State agencies, local educational agencies, school food authorities, schools and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 3. The authority citation for 7 CFR Part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 4. Section 215.7 is amended by adding a new paragraph (f) to read as follows:

§ 215.7 Requirements for participation.

* * * * *

(f) *Program evaluations.* Local educational agencies, school food authorities, schools, child care institutions and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.

■ 5. Section 215.11 is amended by adding a new paragraph (f) to read as follows:

§ 215.11 Special responsibilities of State agencies.

* * * * *

(f) *Program evaluations.* States, State agencies, and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 6. The authority citation for 7 CFR Part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 7. Section 220.7 is amended by adding a new paragraph (g) to read as follows:

§ 220.7 Requirements for participation.

* * * * *

(g) *Program evaluations.* Local educational agencies, school food authorities, schools, and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.

■ 8. Section 220.13 is amended by adding a new paragraph (m) to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(m) *Program evaluations.* States, State agencies, and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 9. The authority citation for 7 CFR Part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

■ 10. Section 225.5 is amended by adding a new paragraph (a)(5) to read as follows:

§ 225.5 Payments to State agencies and use of Program funds.

* * * * *

(a) * * *

(5) *Full use of Federal funds.* States and State agencies must support the full use of Federal funds provided to State agencies for the administration of Child Nutrition Programs, and exclude such funds from State budget restrictions or limitations including, hiring freezes, work furloughs, and travel restrictions.

* * * * *

■ 11. Section 225.18 is amended by adding a new paragraph (j) to read as follows:

§ 225.18 Miscellaneous administrative provisions.

* * * * *

(j) *Program evaluations.* States, State agencies, sponsors, sites and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966, as amended.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 12. The authority citation for 7 CFR Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 13. Section 226.8 is amended by redesignating paragraphs (e) through (g) as paragraphs (f) through (h), respectively; and by adding a new paragraph (e) to read as follows:

§ 226.8 Audits.

* * * * *

(e) *Full use of Federal funds.* States and State agencies must support the full use of Federal funds provided to State agencies under 226.4(j) of this part to support State audit activities, and exclude such funds from State budget restrictions or limitations, including hiring freezes, work furloughs, and travel restrictions.

* * * * *

■ 14. Section 226.25 is amended by adding a new paragraph (h) to read as follows:

§ 226.25 Other provisions.

* * * * *

(h) *Program evaluations.* States, State agencies, institutions, facilities and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard

B. Russell National School Lunch Act and the Child Nutrition Act of 1966.

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

■ 15. The authority citation for 7 CFR Part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

■ 16. Section 235.6 is amended by adding a new paragraph (i) to read as follows:

§ 235.6 Use of funds.

* * * * *

(i) *Full use of Federal funds.* States and State agencies must support the full use of Federal funds provided to State agencies for the administration of Child Nutrition Programs, and exclude such funds from State budget restrictions or limitations including hiring freezes, work furloughs, and travel restrictions.

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 17. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 18. Section 246.3 is amended to add a new paragraph (c)(3), as follows:

§ 246.3 Administration.

* * * * *

(c) * * *

(3) The written agreement must include a statement that supports full use of Federal funds provided to State agencies for the administration of the WIC Program, and excludes such funds from State budget restrictions or limitations including hiring freezes, work furloughs, and travel restrictions.

* * * * *

■ 19. Section 246.26 is amended by adding a new paragraph (k) to read as follows:

§ 246.26 Other provisions.

* * * * *

(k) *Program evaluations.* State and local WIC agencies and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1786).

PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

■ 20. The authority citation for part 248 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 21. Section 248.3 is amended by redesignating paragraph (c) introductory text as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 248.3 Administration.

* * * * *

(c) * * *

(2) The written agreement must include a statement that supports full use of Federal funds provided to State agencies for the administration of the FMNP, and excludes such funds from State budget restrictions or limitations, including hiring freezes, work furloughs, and travel restrictions.

* * * * *

■ 22. Section 248.24 is amended by adding a new paragraph (d) to read as follows:

§ 248.24 Other provisions.

* * * * *

(d) *Program evaluations.* State and local FMNP agencies and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1786).

Dated: June 23, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–16282 Filed 6–28–11; 8:45 am]

BILLING CODE 3410–30–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–3220; File No. S7–25–10]

RIN 3235–AK66

Family Offices

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting a rule to define ''family offices'' that will be excluded from the definition of an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and thus will not be subject to regulation under the Advisers Act.

DATES: *Effective Date:* August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Sarah ten Siethoff, Senior Special Counsel, or Vivien Liu, Senior Counsel, at (202) 551–6787 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting rule 202(a)(11)(G)–1 [17 CFR 275.202(a)(11)(G)–1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (the ''Advisers Act'' or ''Act'').[1]

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I. Background

On October 12, 2010, the Commission issued a release proposing new rule 202(a)(11)(G)–1 that would exempt ''family offices'' from regulation under the Advisers Act.[2] We proposed this rule in anticipation of the Dodd-Frank Wall Street Reform and Consumer Protection Act's (the ''Dodd-Frank Act'')[3] repeal of the private adviser exemption from registration contained in section 203(b)(3) of the Advisers Act, effective July 21, 2011, upon which many family offices currently rely.[4]

The Dodd-Frank Act creates in its place a new exclusion from the Advisers Act in section 202(a)(11)(G) under which family offices, as defined by the Commission, are not investment advisers subject to the Advisers Act.[5] Historically, family offices that fell outside the private adviser exemption have sought and obtained from us orders under the Advisers Act declaring those offices not to be investment advisers within the intent of section

[1] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified.

[2] *See Family Offices,* Investment Advisers Act Release No. 3098 (Oct. 12, 2010) [75 FR 63753 (Oct. 18, 2010)] (''Proposing Release''). ''Family offices'' are entities established by wealthy families to manage their wealth and provide other services to family members. *See* section I of the Proposing Release for a discussion of family offices.

[3] Public Law 111–203, 124 Stat. 1376 (2010), at section 403.

[4] 15 U.S.C. 80b–2(b)(3). This provision exempts from registration any adviser that during the course of the preceding 12 months had fewer than 15 clients and neither held itself out to the public as an investment adviser nor advised any registered investment company or business development company.

[5] *See* section 409 of the Dodd-Frank Act.

202(a)(11) of the Advisers Act.[6] Recognizing this past practice, section 409 of the Dodd-Frank Act instructs that any family office definition the Commission adopts should be ''consistent with the previous exemptive policy'' of the Commission and recognize ''the range of organizational, management, and employment structures and arrangements employed by family offices.'' [7]

We received approximately 90 comments on the proposed rule, most of which were submitted by law firms representing family offices.[8] Many urged that we adopt a broader exemption to accommodate typical family office structures that were not reflected in our previous exemptive orders.[9] Some urged us to include exceptions in various aspects of the rule to allow individuals or entities with no family relations to nevertheless receive investment advice from the family office without the protections of the Advisers Act.[10] Some disputed our interpretation of the legislative direction we received to define the term ''family office'' consistent with our previous exemptive orders.[11] After careful consideration of these comment letters, we are adopting rule 202(a)(11)(G)–1, with certain modifications from our proposal as further described below.

II. Discussion

We are adopting new rule 202(a)(11)(G)–1 under the Advisers Act to define the term ''family office'' for purposes of the Act. Family offices, as so defined, are excluded from the Act's definition of ''investment adviser,'' and are thus not subject to any of the provisions of the Act. The scope of the rule is generally consistent with the conditions of exemptive orders that we have issued to family offices. As with the proposal, and as discussed in more detail below, our final rule in some cases has modified those conditions to turn the fact-specific exemptive orders into a rule of general applicability and to take into account the need for certain clarifications and further modifications identified by commenters.

As we discussed in the Proposing Release, our orders have provided an exclusion for family offices because we viewed them as not the sort of arrangement that the Advisers Act was designed to regulate.[12] Disputes among family members concerning the operation of the family office could, as we noted in the Proposing Release, be resolved within the family unit or, if necessary, through state courts under laws designed to govern family disputes. In light of the purpose of the exclusion and the legislative instructions we received, we have not expanded the exclusion, as several commenters suggested, to permit family offices to provide advisory services to multiple families or to clients who are not family members, other than certain key employees.

The failure of a family office to be able to meet the conditions of the rule will not preclude the office from providing advisory services to family members either collectively or individually. Rather, the family office will need to register under the Advisers Act (unless another exemption is available) or seek an exemptive order from the Commission. A number of family offices currently are registered under the Advisers Act.

A. Family Office Structure and Scope of Activities

As proposed, rule 202(a)(11)(G)–1 contains three general conditions. First, the exclusion is limited to family offices that provide advice about securities only to certain ''family clients.'' Second, it requires that family clients wholly own the family office and family members and/or family entities control the family office. Third, it precludes a family office from holding itself out to the public as an investment adviser. In addition to these conditions, we have incorporated into the rule the ''grandfathering'' provision required by section 409 of the Dodd-Frank Act.[13]

1. Family Clients

A family office excluded from the Act is limited to an office that advises only ''family clients.'' [14] As discussed in more detail below, family clients include current and former family members, certain employees of the family office (and, under certain circumstances, former employees), charities funded exclusively by family clients, estates of current and former family members or key employees, trusts existing for the sole current benefit of family clients or, if both family clients and charitable and non-profit organizations are the sole current beneficiaries, trusts funded solely by family clients, revocable trusts funded solely by family clients, certain key employee trusts, and companies wholly owned exclusively by, and operated for the sole benefit of, family clients (with certain exceptions).[15]

a. Family Member

Under the rule, a ''family member'' includes all lineal descendants of a common ancestor (who may be living or deceased) as well as current and former spouses or spousal equivalents of those descendants, provided that the common ancestor is no more than 10 generations removed from the youngest generation of family members.[16] All children by adoption and current and former stepchildren also are considered family members.

We have expanded persons who may be considered family members in response to several comments we received. We had proposed to define the term ''family member'' by reference to

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[6] *See, e.g., Bear Creek Inc.,* Investment Advisers Act Release Nos. 1931 (Mar. 9, 2001) (notice) [66 FR 15150 (Mar. 15, 2001)] and 1935 (Apr. 4, 2001) (order); *Riverton Management, Inc.,* Investment Advisers Act Release Nos. 2459 (Dec. 9, 2005) [70 FR 74381 (Dec. 15, 2005)] and 2471 (Jan. 6, 2006) (order). We are troubled by comment letters we receive by counsel to some family offices that appear to acknowledge that their clients were operating as unregistered investment advisers, although they were not eligible for the private adviser exemption and had not obtained an exemptive order from us. We note that an adviser may not ''rely'' on exemptive orders issued to other persons.

[7] Section 409(b) of the Dodd-Frank Act. Section 409 also includes a ''grandfathering clause'' that precludes us from excluding certain family offices from the definition solely because they provide investment advice to certain clients and had provided investment advice to those clients before January 1, 2010. *See* section 409(b)(3) of the Dodd-Frank Act.

[8] The public comments we received on the Proposing Release are available on our website at *http://www.sec.gov/comments/s7-25-10/s72510.shtml.*

[9] *See, e.g.,* Comment Letter of the American Bar Association, Section of Business Law and Section of Real Property, Trust and Estate Law (Nov. 18, 2010) (''ABA Letter''); Comment Letter of Perkins Coie/Private Investor Coalition Inc. (Nov. 11, 2010) (''Coalition Letter''); Comment Letter of Tannenbaum, Helpern, Syracuse & Hirschtritt LLP (Nov. 18, 2010) (''Tannenbaum Letter'').

[10] *See, e.g.,* Comment Letter of Miller & Martin PLLC (Nov. 18, 2010) (''Miller Letter'') (recommending that non-family clients be permitted *de minimis* investments in family limited liability companies, partnerships, corporations and other entities and be permitted *de minimis* ownership stakes in the family office itself); Comment Letter of Porter Wright (Nov. 10, 2010) (supporting various forms of non-family client investment through the family office with five percent *de minimis* maximums for each type of exception).

[11] *See, e.g.,* Coalition Letter.

[12] *See* Proposing Release, *supra* note 2, at sections I and II for a discussion of the rationale for the family office exclusion.

[13] *See supra* note 7 and section II.A.5 of this Release.

[14] Rule 202(a)(11)(G)–1(b)(1).

[15] The term ''company'' used throughout this Release and rule 202(a)(11)(G)–1 has the same meaning as in section 202(a)(5) of the Advisers Act, which defines ''company'' as ''a corporation, a partnership, an association, a joint-stock company, a trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11, or similar official, or any liquidating agent for any of the foregoing, in his capacity as such.''

[16] Rule 202(a)(11)(G)–1(d)(6).

the ''founder'' of the family office, and generally to include the founder's spouse (or spousal equivalent), their parents, their lineal descendants, and their siblings and their lineal descendants.[17] Commenters observed that the proposed rule implicitly assumed that the founder of the family office is the initial generator of the family's wealth and is an individual or couple.[18] They noted that in many cases, however, family offices are established by persons several generations remote from the initial wealth generator.[19] Some commenters also criticized our proposed approach because it would treat who could be a family member differently depending on when the family office was established.[20] For example, one commenter stated that our proposal would have allowed a family office that was formed a long time ago to provide services to persons that are currently third or fourth cousins to each other, but that a family office established today may need to wait at least 40 or 50 years before being able to provide services to equivalent types of family members.[21]

Some commenters recommended that the Commission address these concerns by leaving the term ''family member'' undefined,[22] while others recommended that the Commission retain the approach of the proposed rule, but expand the rule to treat as family members grandparents, great-grandparents, aunts, uncles, great aunts, and great uncles of the founders and their spouses and children.[23] Leaving the term family member undefined could allow typical commercial investment advisory businesses to rely on the exclusion (by, for example, designating an extremely remote family member as a common ancestor). On the other hand, attempting to expand the family member definition by ascending up the family tree from the founders would not address the difficulty in identifying the founders of the family office as identified by commenters and would not address the concern, depending on when the family office was founded, that the definition will not capture many family members of family offices established several generations after the initial family wealth was created.

We are adopting, instead, an approach suggested in several comment letters that permits a family to choose a common ancestor (who may be deceased) and define family members by reference to the degree of lineal kinship to the designated relative.[24] This approach avoids any assumptions regarding the source of family wealth and the inconsistent treatment of extended family members compared to the approach we proposed.[25] In order to prevent families from choosing an extremely remote ancestor, which could allow commercial advisory businesses to rely on the rule, we are imposing a 10 generation limit between the oldest and youngest generation of family members. Such a limit, suggested by several commenters, would constrain the scope of persons considered family members while accommodating the typical number of generations served by most family offices.[26]

Under this approach, the family office will be able to choose the common ancestor and may change that designation over time such that the family office clientele is able to shift over time along with the family members served by the family office. A family office exempt under the rule with a common ancestor several generations up from current family members will be able to serve a greater number of current collateral family members but fewer future lineal members.

For example, G1 (who is deceased) founded a business and placed his fortune into a trust for the benefit of his heirs. G4 founded a family office to manage that wealth for the ever growing number of family members descended from G1 and treated G1 as the common ancestor for purposes of which family members the family office could advise under the exclusion. At the time G4 created the family office, current clients extended as far as G4's great-grandchildren (or G7). Over time the family grows and additional generations are born. Eventually, to allow the family office to serve later generations that would otherwise extend beyond the 10 generation limit, the family office redesignates its common ancestor to an individual in G3.[27] The family office can do this under rule 202(a)(11)(G)–1 because the rule does not specify which individual the common ancestor is and it does not specify that it always has to be the same common ancestor. As a result of this redesignation, the family office is able to advise clients two generations younger, but would no longer be able to advise certain branches

[17] Proposed rule 202(a)(11)(G)–1(d)(5) (defining the founders as the ''natural person and his or her spouse or spousal equivalent for whose benefit the family office was established and any subsequent spouse of such individuals.'' Proposed rule 202(a)(11)(G)–1(d)(3) (defining family members as ''the founders, their lineal descendants (including by adoption and stepchildren), and such lineal descendants' spouses or spousal equivalents; the parents of the founders; and the siblings of the founders and such siblings' spouses or spousal equivalents and their lineal descendants (including by adoption and stepchildren) and such lineal descendants' spouses or spousal equivalents'').

[18] *See, e.g.,* Comment Letter of Dechert LLP (Nov. 29, 2010) (''Dechert Letter''); Comment Letter of Fried, Frank, Harris, Shriver & Jacobs LLP (Nov. 18, 2010) (''Fried Frank Letter'').

[19] *See, e.g.,* Coalition Letter; Comment Letter of the New York State Bar Association, Business Law Section, Securities Regulation Committee (Dec. 10, 2010) (''NY Bar Letter'').

[20] *See, e.g.,* NY Bar Letter; Comment Letter of Skadden, Arps, Slate, Meagher & Flom LLP (Nov. 17, 2010) (''Skadden Letter'').

[21] Skadden Letter.

[22] *See, e.g.,* Comment Letter of Foley & Lardner LLP (Nov. 18, 2010) (''Foley Letter''); Miller Letter; Comment Letter of Northern Trust (Nov. 18, 2010) (''Northern Trust Letter'').

[23] *See, e.g.,* Comment Letter of the American Institute of Certified Public Accountants (Nov. 16, 2010) (''AICPA Letter''); Comment Letter of The Blum Firm, P.C./Blum (Nov. 18, 2010) (''Blum Letter''); Comment Letter of Hogan Lovells US LLP (Nov. 18, 2010) (''Hogan Letter'').

[24] *See, e.g.,* ABA Letter; Comment Letter of Duncan Associates (Nov. 18, 2010) (''Duncan Letter''); Comment Letter of Kozusko Harris Vetter Wareh LLP (Nov. 18, 2010) (''Kozusko Letter'').

[25] Moreover, the approach we are adopting has been used in other contexts to delimit members of a family for purposes of special regulatory treatment. *See, e.g.,* Section 1361(c)(1)(B) of the Internal Revenue Code of 1986, as amended (treating members of a family as a single shareholder of an S Corporation and defining family members as ''a common ancestor, any lineal descendant of such common ancestor, and any spouse or former spouse of such common ancestor or any such lineal descendant'' but providing that an ''individual shall not be considered to be a common ancestor if, on the applicable date, the individual is more than 6 generations removed from the youngest generation of shareholders''); Nevada Revised Statutes section 669.042 (defining a family trust company subject to special trust company regulation as having family members within 10 degrees of lineal kinship or 9 degrees of collateral kinship to the designated relative); New Hampshire Revised Statutes section 392–B:1 (defining a family trust company subject to special banking regulation as having family members within 5 degrees of lineal kinship or 9 degrees of collateral kinship to a designated relative).

[26] *See, e.g.,* ABA Letter (suggesting a 9 generation limit); Duncan Letter (recommending that the Commission follow that used for Nevada family trust companies, which allows for 10 degrees of lineal kinship and 9 degrees of collateral kinship and stating that other states' family trust company laws with fewer degrees of kinship allowed had resulted in some family office clientele being outside the limitations); Kozusko Letter (recommending 10 generations (but not counting minors as a separate generation from their parents) as a size that, based on its experience and client base and on studies of family businesses, would comfortably accommodate most family offices but that would not open up the family office to abuse as a disguised commercial enterprise); Northern Trust Letter (stating that of the over 400 family offices they represent, some are now focused on their fifth through seventh generations). We have determined not to include a separate limit on degrees of permissible collateral kinship because, given our relatively expansive 10 generation lineal limit, a reasonable collateral limit would not in practice expand the range of family members covered by the rule.

[27] No formal documentation or procedure is required for designating or redesignating a common ancestor.

of G1's family tree without registering under the Advisers Act.[28]

The rule, as proposed, treats lineal descendants and their spouses, spousal equivalents, stepchildren, and adopted children as family members.[29] Most commenters generally supported our inclusion of spousal equivalents, stepchildren and children by adoption,[30] but two commenters [31] opposed the inclusion of spousal equivalents, invoking the Defense of Marriage Act (''DOMA'').[32] Because the term ''spouse'' is not defined in the rule and a ''spousal equivalent'' is identified as a category of person, separate and distinct from a ''spouse,'' that meets the definition of a ''family member,'' we do not believe that the rule violates that Act.

In response to comments we have expanded the definition to include foster children and persons who were minors when another family member became their legal guardian.[33] We are persuaded by the commenters that argued that foster children and children in a guardianship relationship often have familial ties indistinguishable from that of children and stepchildren, and that including such individuals would not cause the family office to resemble a typical commercial investment adviser.[34]

Finally, the rule treats former family members (*i.e.,* former spouses, spousal equivalents and stepchildren) as family members.[35] We had proposed permitting former family members to retain any investments held through the family office at the time they became a former family member, but to limit them from making any new investments through the family office.[36] Commenters pointed out that a former spouse's financial arrangements often remain intertwined with those of the family, particularly if they provide for children who remain family members.[37] Some argued that stepchildren of a divorced spouse may remain close to the family after the divorce.[38] We are persuaded by these arguments and have modified the definition of former family member to include stepchildren.[39]

b. Involuntary Transfers

As proposed, rule 202(a)(11)(G)–1 prevents an involuntary transfer of assets to a person who is not a family client (*e.g.,* a bequest to a friend of assets in a family office-advised private fund) from causing the family office to lose its exclusion. Under the rule, a family office may continue to provide advice with respect to such assets following an involuntary transfer for a transition period of up to one year.[40] The transition period permits the family office to orderly transition that client's assets to another investment adviser or otherwise restructure its activities to comply with the Advisers Act.

We proposed to allow the family office to continue to advise a non-family client for four months following the transfer of assets resulting from the involuntary event.[41] A number of commenters argued that four months is an inadequate period of time to transition investment advice arrangements as a result of an involuntary transfer,[42]particularly for illiquid assets such as investments in private funds.[43] Some suggested that the family office be required to transfer the assets as soon as legally and practically feasible.[44] Others suggested that we treat involuntary transfers in the same manner as we had proposed treating former family members—permitting their existing investments to remain with the family office but prohibiting new investments.[45] Still others suggested that the transfer period be lengthened to anywhere from one year to three years.[46]

After an involuntary transfer, such as a bequest, the office would no longer be providing advice solely to members of a single family, and after several such bequests the office could cease to operate in any way as a family office. Thus, we believe that relief for involuntary transfers must be temporary. We are persuaded, however, that the four month transition period we proposed would be inadequate and have extended the period to one year.[47]

c. Family Trusts and Estates

Rule 202(a)(11)(G)–1 treats as a family client certain family trusts established for testamentary and charitable purposes. We have expanded the types of trusts that may be treated as a family client in response to several comments that our proposal failed to take into account certain aspects of trust and estate planning.[48] As discussed in more detail below, these expansions accommodate common estate planning and charitable giving plans and do not suggest that the family office is engaging in a commercial enterprise.

Irrevocable trusts. The rule treats as a family client any irrevocable trust in which one or more family clients are the only current beneficiaries.[49] We proposed including as a family client

[28] *See* Annex A for an illustration of the impact of redesignating the common ancestor.

[29] Rule 202(a)(11)(G)–1(d)(6). As proposed, we are using the definition of spousal equivalent currently used under our auditor independence rules. *See* Proposing Release, *supra* note 2, at n.24.

[30] *See, e.g.,* Coalition Letter; NY Bar Letter.

[31] Comment Letter of Alliance Defense Fund (Nov. 18, 2010); Comment Letter of Thomas V. Cliff (Nov. 1, 2010).

[32] 1 U.S.C. 7. The Act provides that in ''determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States * * * the word 'spouse' refers only to a person of the opposite sex who is a husband or wife.''

[33] *See, e.g.,* ABA Letter; Dechert Letter; Tannenbaum Letter.

[34] *See, e.g.,* Hogan Letter; Tannenbaum Letter. Guardianship arrangements for adults, however, can raise unique conflicts and issues as compared to guardianships for minors that we believe are more appropriately addressed through an exemptive order process where the Commission can consider the specific facts and circumstances, than through a rule of general applicability.

[35] Rule 202(a)(11)(G)–1(d)(4)(ii).

[36] Proposed rule 202(a)(11)(G)–1(d)(2)(vi), and (d)(4).

[37] *See, e.g.,* Comment Letter of Perkins Coie/Lindquist (Nov. 18, 2010) (''Lindquist Letter''); Comment Letter of Proskauer Rose LLP (Nov. 16, 2010).

[38] *See, e.g.,* Coalition Letter; Comment Letter of Kramer Levin Naftalis & Frankel LLP (Nov. 17, 2010) (''Kramer Levin Letter'').

[39] Rule 202(a)(11)(G)–1(d)(7).

[40] Rule 202(a)(11)(G)–1(b)(1).

[41] Proposed rule 202(a)(11)(G)–1(b)(1).

[42] *See, e.g.,* Comment Letter of Davis Polk (Nov. 18, 2010) (''Davis Polk Letter''); Fried Frank Letter.

[43] *See, e.g.,* ABA Letter; Comment Letter of Withers Bergman LLP (Nov. 17, 2010) (''Withers Bergman Letter'').

[44] *See, e.g.,* Comment Letter of Barnes & Thornburg LLP (''as soon as legally and reasonably practical, or in the alternative, within one year''); Coalition Letter (''as soon as it is both legally and practically feasible, and in any event would have a grace period of at least one year'').

[45] *See, e.g.,* Fried Frank Letter; Comment Letter of Sidley Austin LLP (Nov. 18, 2010).

[46] *See, e.g.,* AICPA Letter (1 year); Comment Letter of Bessemer Securities Corporation (Nov. 17, 2010) (''Bessemer Letter'') (1 year); Davis Polk Letter (3 years); Dechert Letter (2 years); Hogan Letter (2 years); Comment Letter of Kleinberg, Kaplan, Wolff & Cohen, P.C. (Nov. 17, 2010) (''Kleinberg Letter'') (2 years); Kramer Levin Letter (1 year).

[47] The one year period would not begin to run until completion of the transfer of legal title to the assets resulting from the involuntary event. We note also that if the involuntary transferee does not receive investment advice about securities for compensation from the family office, then the availability of rule 202(a)(11)(G)–1 would be unaffected. For a discussion of the Commission's and the staff's views on when investment advice about securities for compensation is provided under the Advisers Act, see *Applicability of the Investment Advisers Act to Financial Planners,* Pensions *Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services,* Investment Advisers Act Release No. 1092 (Oct. 8, 1987) [52 FR 38400 (Oct. 16, 1987)] (''Release 1092'').

[48] *See* rule 202(a)(11)(G)–1(d)(4). Several commenters questioned whether the identity of the trustee matters under the rule. *See, e.g.,* Comment Letter of SchiffHardin LLP/Debra L. Stetter (Nov. 18, 2010) (''Schiff/Stetter Letter''); Comment Letter of Vinson & Elkins LLP (Nov. 15, 2010). A trust that meets the conditions in the rule for qualifying as a family client is unaffected by whether the trust is managed by an independent trustee.

[49] Rule 202(a)(11)(G)–1(d)(4)(vii).

any trust or estate existing for the sole benefit of one or more family clients.[50]

As suggested by commenters, the final rule disregards contingent beneficiaries of trusts, which commenters explained are often named in the event that all family members are deceased to prevent the trust from distributing assets to distant relatives or escheating to the state.[51] If the contingent beneficiary later becomes an actual beneficiary and is not a permitted current beneficiary of a family trust under the exclusion (such as a family friend), the rule's provisions concerning involuntary transfers allow for an orderly transition of investment advice regarding those assets away from the family office.

Also in response to commenters, the rule permits the family office to advise irrevocable trusts funded exclusively by one or more other family clients in which the only current beneficiaries, in addition to other family clients, are non-profit organizations, charitable foundations, charitable trusts, or other charitable organizations.[52] Several commenters noted that families often establish and fund trusts whose sole current beneficiaries are both family clients and public charities.[53] Such an entity may not be a ''charitable trust'' as a technical manner, but we see no reason for treating them differently under the rule from charitable trusts funded exclusively by family clients.

Other commenters argued that a trust should be permitted to have current beneficiaries that are not family clients and that the rule instead should merely require that the trust be for the primary benefit of one or more family clients.[54] These commenters argued that the family office's provision of investment advice to these kinds of trusts would not change the family office's character and that it is the trust that is the client of the family office, rather than the beneficiary. We disagree. Current beneficiaries of a trust are greatly affected by the nature and quality of investment advice provided to the trust and would be harmed if there were fraud committed by the family office in managing trust assets. Even if in small numbers, these individuals and entities stand to benefit substantially from the protections of the Advisers Act and do not necessarily have any family ties or investment sophistication to stand in the Act's stead.

Revocable Trusts. The rule also treats as a family client a revocable trust of which one or more family clients are the sole grantors.[55] Accordingly, a revocable trust may be advised by a family office relying on the rule regardless of whether the beneficiaries of the trust are family members. We received several comments that argued that revocable trusts should be treated differently than irrevocable trusts, since the grantor of a revocable trust effectively controls the trust and the beneficiaries of the trust have no reasonable expectation of obtaining any benefit from the trust until the trust becomes irrevocable (generally upon the death of the grantor).[56] Therefore, the identity of the beneficiaries of the trust should not matter so long as one or more family clients are the sole grantors of the trust. We agree that in the case of a revocable trust, the contingent nature of any beneficiary's expectation that it will benefit from the trust's assets supports disregarding a revocable trust's beneficiaries under the exclusion, just as other contingent beneficiaries are disregarded.

Estates. The final rule treats as a family client an estate of a family member, former family member, key employee or former key employee.[57] As suggested by several commenters, this provision permits a family office to advise the executor of a family member's estate even if that estate will be distributed to (and thus be for the benefit of) non-family members.[58] The executor of an estate is acting in lieu of the deceased family client in managing and distributing the family client's assets. Therefore, advice to the executor is equivalent to providing advice to that family client.[59]

d. Non-Profit and Charitable Organizations

The rule treats as a family client any non-profit organization, charitable foundation, charitable trust (including charitable lead trusts and charitable remainder trusts whose only current beneficiaries are other family clients and charitable or non-profit organizations), or other charitable organization, in each case funded exclusively by one or more other family clients.[60] We understand that some family offices currently advise charitable or non-profit organizations that have accepted funding from non-family clients.[61] So that these family offices have sufficient time to transition such advisory arrangements or restructure the charitable or non-profit organization, we are including a transition period of until December 31, 2013 before family offices have to comply with this aspect of the exclusion.[62]

We had proposed treating as a family client any charitable foundation, charitable organization, or charitable trust established and funded exclusively by one or more family members.[63] Some commenters recommended that the Commission change the requirement that charities be established and funded ''by family members'' to ''by family clients'' because they asserted that family charities are often established and funded by family trusts, corporations or estates, and not exclusively by family members.[64] We agree that making this change is consistent with our view of the scope of persons that should be permitted to be served by the family office. Several commenters also believed that we should not require that a charitable organization be established by family members or family clients in order to receive investment advice from the family office under the exclusion because in some cases such charitable organizations may have been originally established by distant relatives that do not currently qualify as ''family members.'' [65] We agree that as long as all the funding currently held by the charitable organization came solely from family clients, the individuals or entities that originally established it are not of import for our policy rationale.[66] We have changed the rule accordingly.

[50] Proposed rule 202(a)(11)(G)–1(d)(2)(iv).

[51] *See, e.g.,* Comment Letter of Arnold & Porter LLP (Nov. 11, 2010); Bessemer Letter.

[52] Rule 202(a)(11)(G)–1(d)(4)(viii).

[53] *See, e.g.,* Comment Letter of Jones Day (Nov. 11, 2010) (''Jones Day Letter''); Comment Letter of McDermott Will & Emery/Edwin C. Laurenson (Nov. 18, 2010) (''McDermott/Laurenson Letter'').

[54] *See, e.g.,* Comment Letter of Dorsey & Whitney LLP/Bruce A. MacKenzie (Nov. 17, 2010) (''Dorsey Letter''); McDermott/Laurenson Letter.

[55] Rule 202(a)(11)(G)–1(d)(4)(ix).

[56] *See, e.g.,* Davis Polk Letter; Comment Letter of Lee & Stone (Nov. 17, 2010) (''Lee & Stone Letter'').

[57] Rule 202(a)(11)(G)–1(d)(4)(vi). For former key employees, the advice is subject to the condition contained in rule 202(a)(11)(G)–1(d)(4)(iv).

[58] *See, e.g.,* ABA Letter; AICPA Letter.

[59] *See, e.g.,* Comment Letter of K&L Gates/Paul T. Metzger (Nov. 17, 2010); Comment Letter of Levin Schreder & Carey Ltd (Nov. 18, 2010) (''Levin Schreder Letter'').

[60] Rule 202(a)(11)(G)–1(d)(4)(v).

[61] *See, e.g.,* Foley Letter; Comment Letter of Morgan, Lewis & Bockius LLP (Nov. 18, 2010) (''Morgan Lewis Letter'').

[62] Rule 202(a)(11)(G)–1(e)(1).

[63] Proposed rule 202(a)(11)(G)–1(d)(2)(iii).

[64] *See, e.g.,* Dorsey Letter; Levin Schreder Letter.

[65] *See, e.g.,* Comment Letter of Goodwin Procter LLP (Nov. 17, 2010) (''Goodwin Letter''); Comment Letter of Willkie Farr & Gallagher LLP (Nov. 17, 2010).

[66] We note that only the actual contributions to the non-profit or charitable organization need be examined for this purpose, and not any income, gains or losses relating to those contributions. For purposes of determining whether funding provided by a non-family client to the non-profit or charitable organization is ''currently held'' by the organization, the non-profit or charitable

Continued

A number of commenters stated that ''charitable organization'' can have varying meanings when considered under trust and estate law versus under tax law.[67] Some of these commenters suggested that we add the term ''non-profit organization'' to ensure that we capture what is generally considered a charitable organization under both trust and tax law and based on their view that, as long as the non-profit organization is solely funded by family clients, the family office providing it with investment advice under the exclusion should not be of concern as a policy matter.[68] We intended to broadly capture charitable and non-profit organizations as commonly understood under both trust law and tax law and have modified the rule as suggested. Other commenters asked that we clarify that charitable lead trusts and charitable remainder trusts are included as family clients under the exclusion.[69] The rule we are adopting today clarifies that such trusts are included if their sole current beneficiaries are other family clients and charitable or non-profit organizations and if they meet the terms of other charitable organizations that may be advised by the family office—namely that they are funded exclusively by other family clients.[70] We believe this treatment of charitable lead trusts and charitable remainder trusts ensures that they are treated consistently with other trusts and charitable or non-profit organizations under the exclusion.

Finally, several commenters stated that the Commission should permit the family office to provide investment advice under the exclusion to charitable organizations even if funded in part by non-family clients.[71] They argued that because the contributed assets will not be invested for the benefit of the donors, as long as the family controlled the charitable entity or was its substantial contributor, it served no public policy purpose to preclude third party contributions.[72] We are leaving this aspect of the proposal unchanged because a non-profit or charitable organization that currently holds non-family funding lacks the characteristics necessary to be viewed as a member of a family unit. Permitting such organizations to be advised by a family office would be inconsistent with the exclusion's underlying rationale that recognizes that the Advisers Act is not designed to regulate families managing their own wealth.

As noted above, however, we do recognize that some non-profit or charitable organizations advised by family offices have accepted non-family client funding. Such organizations may need time to spend the non-family funding so that none of it is ''currently held'' by the organization or to transition advisory arrangements. The rule provides until December 31, 2013 before this condition to the exclusion becomes applicable to family offices (*i.e.,* if the only reason the family office would not meet the exclusion is because it advises a non-profit or charitable organization that currently holds non-family client funding, the family office generally may nevertheless rely on the exclusion until December 31, 2013).[73] To rely on this transition period, a non-profit or charitable organization advised by the family office must not accept any additional funding from any non-family clients after August 31, 2011, except that during the transition period the non-profit or charitable organization may accept funding provided in fulfillment of any pledge made prior to August 31, 2011.

e. Other Family Entities

To allow the family office to structure its activities through typical investment structures, rule 202(a)(11)(G)–1 treats as a family client any company including a pooled investment vehicle, that is wholly owned, directly or indirectly, by one or more family clients and operated for the sole benefit of family clients.[74] Some commenters objected to the requirement in our proposal that these entities be wholly owned and controlled by, and operated for the sole benefit of, family clients to qualify for the exclusion.[75] These commenters generally suggested modifying this aspect of the family client definition to require only that the entity be majority owned *or* controlled and operated for the *primary* benefit of family clients or similar variations.[76] One commenter suggested such an expansion to allow employees of the family that do not qualify as ''key employees'' to have a management role in the entity.[77] Others believed that non-family clients more broadly should be able to have a greater role in family office-advised entities.[78]

We believe that the elements of ownership and benefit are important to ensuring that the policy objectives underlying the family office exclusion are preserved. If non-family clients own a portion of such an entity, they have a vested interest in how the assets of that entity are managed—it is the source of their ownership stake's value. This is also true of a non-family client who is a beneficiary of that entity. As long as the entity is wholly owned by and for the sole benefit of family clients, however, we agree that, as with family trusts and family charitable organizations, the entity having non-family client control does not change that family clients are the ultimate beneficiaries of the investment advice, and thus we have eliminated the requirement for control by family clients in the final rule.

f. Key Employees

The final rule treats certain key employees of the family office, their estates, and certain entities through which key employees may invest as family clients so that they may receive investment advice from, and participate in investment opportunities provided by, the family office. More specifically, the final rule permits the family office to provide investment advice to any natural person (including any key employee's spouse or spousal equivalent who holds a joint, community property or other similar shared ownership interest with that key employee) who is (i) an executive officer, director, trustee, general partner,

organization may offset any spending by the organization occurring at any time in the year of that non-family client contribution or any subsequent year against the non-family client contribution (*i.e.,* the organization may treat the non-family client contributions as the first funding spent).

[67] *See, e.g.,* Goodwin Letter; Kozusko Letter.

[68] *See, e.g.,* Coalition Letter; Kozusko Letter.

[69] *See, e.g.,* Dechert Letter; Fried Frank Letter. Charitable lead trusts are entities in which a charity receives payments from the trust for a specified period as a current beneficiary, but the remainder of the trust is distributed to specified beneficiaries. Charitable remainder trusts are entities in which specified individuals or entities receive payments from the trust for a specified period as a current beneficiary, but a charity receives the remainder of the trust.

[70] *See* our discussion about family trusts in section II.A.1.c of this Release.

[71] *See, e.g.,* Foley Letter; Kleinberg Letter.

[72] *See, e.g.,* Ropes & Gray Letter; Skadden Letter.

[73] Rule 202(a)(11)(G)–1(e)(1).

[74] Rule 202(a)(11)(G)–1(d)(4)(xi). Under rule 202(a)(11)(G)–1(d)(2), control is defined as the power to exercise a controlling influence over the management or policies of an entity, unless such power is solely the result of being an officer of such entity. If any of these companies are pooled investment vehicles, they must be exempt from registration as an investment company under the Investment Company Act of 1940 because the Advisers Act requires that an adviser to a registered investment company must register. *See* 15 U.S.C. 80b–3a(a)(1)(B).

[75] *See, e.g.,* Blum Letter; Kramer Levin Letter (suggesting that the requirement be modified to require only that the entity be controlled and 80% owned by family clients to qualify as a family client).

[76] *See, e.g.,* Coalition Letter; Kramer Levin Letter. *See also* Levin Schreder Letter (suggesting that the entity be controlled and substantially owned (80%) by family clients); Miller Letter (suggesting that the entity be wholly owned or controlled by and operated for the primary benefit of family clients).

[77] Morgan Lewis Letter.

[78] *See, e.g.,* Kramer Levin Letter; Miller Letter.

or person serving in a similar capacity at the family office or its affiliated family office or (ii) any other employee of the family office or its affiliated family office (other than an employee performing solely clerical, secretarial, or administrative functions) who, in connection with his or her regular functions or duties, participates in the investment activities of the family office or affiliated family office, provided that such employee has been performing such functions or duties for or on behalf of the family office or affiliated family office, or substantially similar functions or duties for or on behalf of another company, for at least twelve months.[79] The final rule also permits the family office to advise certain trusts of key employees, as further described below. Finally, in addition to receiving direct advice from the family office, key employees (because they are ''family clients'') may indirectly receive investment advice through the family office by their investment in family office-advised private funds, charitable organizations, and other family entities, as described in previous sections of this Release.

Many commenters supported the inclusion of key employees as family clients.[80] They agreed that permitting investment participation by key employees of family offices would align their interests with those of family members and enable family offices to attract highly skilled investment professionals who may not otherwise be attracted to work at a family office.[81]

Some commenters, however, urged us to include key employees of family entities other than the family office as family clients.[82] Some reasoned that since the definition of key employee is based on the knowledgeable employee standard used in Investment Company Act rule 3c–5,[83] it should be expanded to cover key employees of any entity related to the family office because rule 3c–5 allows knowledgeable employees to be employees of certain affiliated entities.[84] Such an approach would extend Investment Company Act rule 3c–5 beyond its intended scope. That rule permits knowledgeable employees of affiliated entities to count as knowledgeable employees of the covered private fund only if the affiliated entity is participating in the investment activities of the covered private fund.[85] Because of this role, these individuals could be presumed to have sufficient financial sophistication, experience, and knowledge to evaluate investment risks and to take steps to protect themselves, even without the protection of the Investment Company Act.[86]

Many family entities advised by the family office, however, are not involved in providing investment advisory services to the family office or its clients and rather have principal business activities in a variety of industries unrelated to investment management. There is no reason to expect that their key employees have a level of knowledge and experience in financial matters sufficient to protect themselves without the protections afforded by the Advisers Act.[87] We agree, however, that if a person qualifies as a knowledgeable employee of an affiliated family office, that those employees should be in a position to protect themselves in receiving investment advice from a family office excluded from regulation under the Advisers Act.[88] We have modified the rule to include knowledgeable employees of an affiliated family office in the definition of key employee.[89]

A few commenters suggested that we include as family clients long-term employees of the family, even if they do not meet the knowledgeable employee standard.[90] Expanding the family client definition in this way would exclude from the Advisers Act's protections individuals for whom we have no basis on which to conclude that they can protect themselves.[91] We therefore decline to make the change suggested by commenters.

We have made two other changes to definitions relating to key employees in response to recommendations from commenters. First, in response to commenters and to reduce uncertainty identified by commenters we have included a definition of ''executive officer,'' which is virtually identical to the definition of the same term used in Advisers Act rule 205–3 and Investment Company Act rule 3c–5.[92] Similar to those rules, this definition delineates executive officers that should have enough financial experience and sophistication to invest without the protection of the Advisers Act. Second, the final rule clarifies that family clients include trusts of which the key employee generally is the sole contributor to the trust and the sole person authorized to make decisions with respect to the trust.[93]

Commenters recommended that we permit a trust established by a key employee with his or her lineal descendants or immediate family members as beneficiaries to be a family client, to allow typical estate planning by key employees.[94] We do not believe it is appropriate to broadly permit trusts for which the key employee is not the sole person authorized to make investment decisions to be a family client. Since a non-family client will be

[79] Rule 202(a)(11)(G)–1(d)(8).

[80] *See, e.g.,* ABA Letter; Coalition Letter.

[81] *Id.*

[82] *See, e.g.,* Fried Frank Letter; NY Bar Letter; Skadden Letter.

[83] *See* Proposing Release, *supra* note 2, at n.46 and accompanying text.

[84] *See, e.g.,* NY Bar Letter; Skadden Letter.

[85] *See* Section III.B of *Privately Offered Investment Companies,* Investment Company Act Release 22597 (April 3, 1997) [62 FR 17512 (April 7, 1997)] (''3(c)(7) Release'').

[86] *See* 3(c)(7) Release, *supra* note 85, at Section III.A.2.B.

[87] As we explained when we adopted rule 3c–5, employees who simply ''obtain information'' but do not ''participate in'' the investment activities of the fund are not included in the definition of knowledgeable employee because they may not have investment experience. *See* 3(c)(7) Release, *supra* note 85, at Section III.B.

[88] Some commenters pointed out that a family may establish more than one family office for tax or other structuring reasons and recommended that the definition of key employee include employees of multiple family offices that serve the same family. *See, e.g.,* Davis Polk Letter; Fried Frank Letter.

[89] Rule 202(a)(11)(G)–1(d)(8). ''Affiliated family office'' is defined as ''a family office wholly owned by family clients of another family office and that is controlled (directly or indirectly) by one or more family members of such other family office and/or family entities affiliated with such other family office and has no clients other than family clients of such other family office.'' Rule 202(a)(11)(G)–1(d)(1).

[90] *See, e.g.,* NY Bar Letter; Skadden Letter. Similarly, a few commenters suggested that we define key employees using the accredited investor standard from Regulation D under the Securities Act of 1933. *See, e.g.,* Comment Letter of Schulte Roth & Zabel LLP (Dec. 8, 2010); Lee & Stone Letter. We believe the knowledgeable employee standard more accurately encompasses employees that are likely to be financially sophisticated and to not need the protections of the Advisers Act.

[91] Exemptive orders issued in the past 10 years generally did not permit family offices to provide investment advice to non-key employees. The two exemptive orders issued to family offices permitting such advice contained grandfathering provisions that restricted these employees' investments to the existing ones and prohibited the advisers from establishing new advisory relationships with a non-family member. *Adler Management, L.L.C.,* Investment Advisers Act Release Nos. 2500 (Mar. 21, 2006) [71 FR 15498 (Mar. 28, 2006)] (notice) and 2508 (Apr. 14, 2006) (order); *Longview Management Group LLC,* Investment Advisers Act Release Nos. 2008 (Jan. 3, 2002) [67 FR 1251 (Jan. 9, 2002)] (notice) and 2013 (Feb. 7, 2002) (order).

[92] Commenters recommending this change include the Fried Frank Letter and the Skadden Letter. Paragraph (d)(3) of the rule, however, differs from rule 205–3 and section 3c–5 in that it does not include executives in charge of sales because such a function is not applicable to a family office.

[93] Rule 202(a)(11)(G)–1(d)(4)(x). The grantor of the trust could also be a current or former spouse or spousal equivalent of the key employee if, at the time of contribution, the spouse or spousal equivalent held a joint, community property, or other similar shared ownership interest in the trust with the key employee.

[94] *See, e.g.,* Withers Bergman Letter (suggesting lineal descendants); Kleinberg Letter (suggesting immediate family members).

making investment decisions for this type of trust, and its beneficiaries are not family members or key employees, this type of trust stands to benefit from the protections of the Advisers Act. However, we are persuaded that it is appropriate to allow the family office to advise trusts for which the key employee is the sole person making investment decisions.[95] Permitting the family office to provide advice to this type of entity tracks a parallel concept included in the definition of ''qualified purchaser'' under the Investment Company Act[96] and thus creates consistency in entities considered not to need investor protection under our rules because investment decisions are made solely by individuals that we have already concluded should have sufficient financial experience and sophistication to act without the protection provided by our regulations.

Some commenters urged us to even further expand the definition of key employee to include their spouses and spousal equivalents (even if not with respect to joint property) or all of their immediate family members.[97] There is no reason to believe that the key employee's spouse or immediate family members independently have the financial sophistication and experience to protect themselves when receiving investment advice from the family office. Such individuals are not considered to be knowledgeable employees under Advisers Act rule 205–3 or Investment Company Act rule 3c–5. We see no basis for following a different approach in this context. The premise of the rule is to allow families to manage their own wealth. Key employee receipt of family office advice is permitted because their position and experience should enable them to protect themselves and to allow family offices to attract talented investment professionals as employees. This underlying rationale does not support as a general rule including key employees' family members unless there is a joint property interest involved.

Several commenters disagreed with the 12-month experience requirement for key employees who are not executive officers, directors, trustees, general partners, or persons serving in similar capacities of the family office, arguing that employees a family office would hire into these roles would presumably possess adequate knowledge and sophistication in financial matters regardless of whether he or she met the 12-month experience requirement.[98] We believe that the 12-month experience requirement is an important part of limiting employees who receive investment advice without the protections of the Advisers Act (or family membership) to those employees that are likely to be in a position or have a level of knowledge and experience in financial matters sufficient to be able to evaluate the risks and take steps to protect themselves. In addition, commenters' argument is equally applicable in a private fund or performance fee context, and we see no basis for distinguishing treatment of key employees of family offices from key employees of private funds or qualified client advisers under Investment Company Act rule 3c–5 and Advisers Act rule 205–3, respectively.[99] We therefore adopt this requirement as proposed.

Finally, as proposed, the final rule prohibits key employees (including their trusts and controlled entities) from making additional investments through the family office upon the end of the key employees' employment by the family office, but will not require former key employees to liquidate or transfer investments held through the family office to avoid imposing possible adverse tax or investment consequences that might otherwise result.[100] While some commenters supported this limitation,[101] one commenter expressed objections to it, asserting that former key employees of family offices often continue to have a close relationship with the family and it should be the family's decision whether to terminate their family office's services to them.[102] We are including key employees as family clients because their particular role in the family office causes us to believe that the employee should be in a position to protect him or herself without the need for the protections of the Advisers Act. Once the employee is no longer in that role, this policy rationale no longer holds true to the same degree. Accordingly, we are adopting this aspect of the rule as proposed.[103]

2. Ownership and Control

The final rule requires that, to qualify for the exclusion from regulation under the Advisers Act, the family office must be wholly owned by family clients and exclusively controlled, directly or indirectly, by one or more family members or family entities.[104] Our final rule expands who may own the family office from ''family members,'' as proposed, to ''family clients.'' However, the rule continues to require that control of the family office remain, directly or indirectly, with family members and their related entities.

Commenters urged us to expand both who could own the family office and who could control a family office under the rule.[105] Some stated that many family offices are owned by family trusts, and that allowing family members to indirectly own and control the family office did not provide sufficient clarity that such a trust could own and control the family office.[106] Commenters also pointed out that many family offices permit their employees to own equity interest in family offices as an incentive to attract and retain talented employees, and urged us not to prohibit such arrangements.[107] These

[95] Rule 202(a)(11)(G)–1(d)(4)(x).

[96] Section 2(a)(51)(A)(iii) of the Investment Company Act.

[97] *See, e.g.,* Kleinberg Letter; Kramer Levin Letter.

[98] *See, e.g.,* ABA Letter; Comment Letter of Cadwalader, Wickersham & Taft LLP (Nov. 18, 2010) (''Cadwalader Letter'').

[99] This analysis is consistent with our analysis in the 3(c)(7) Release where we stated that the 12-month experience requirement was designed to limit investments to employees that have the requisite experience to appreciate the risks of investing in the fund. 3(c)(7) Release, *supra* note 85, at Section III.B. As is the case under rule 3c–5, an employee need not work for a particular family office for the entire 12-month period. The time performing substantially similar functions or duties by that employee for or on behalf of another company may be counted toward the 12 month requirement. *See* 3(c)(7) Release, *supra* note 85.

[100] Rule 202(a)(11)(G)–1(d)(4)(iv).

[101] *See, e.g.,* ABA Letter; Coalition Letter.

[102] Schiff/Stetter Letter.

[103] A number of commenters requested that we clarify the extent to which a family office could provide investment advice to an employee benefit plan or pension plan sponsored by the family office without registering under the Act. *See, e.g.,* Comment Letter of the American Benefits Council/Committee on the Investment of Employee Benefit Assets (Nov. 18, 2010); Coalition Letter; Withers Bergman Letter. In our view, a family office or other employer that merely establishes an employee benefit plan or pension plan and selects one or more investment advisers for that plan would not be an investment adviser subject to the Advisers Act because it would not be an ''investment adviser'' within the meaning of section 202(a)(11). A family office (as defined in rule 202(a)(11)(G)–1) thus would not be required to register under the Act if, in addition to providing advice to family clients, its advisory activities are so limited. However, a family office providing additional advisory services to an employee benefit plan all of whose participants are not family clients may be required to register under the Act unless another exemption is available.

[104] Rule 202(a)(11)(G)–1(b)(2). We have added the word ''exclusively'' to clarify that ''control'' cannot be shared with individuals or companies that are not family members or family entities. A family entity is defined as any of the trusts, companies or other entities set forth in paragraphs (v), (vi), (vii), (viii), (ix), or (xi) of subsection (d)(4) of rule 202(a)(11)(G)–1, but excluding key employees and their trusts from the definition of family client solely for purposes of this definition.

[105] *See, e.g.,* Coalition Letter; Comment Letter of McDermott Will & Emery/Richard L. Dees (Nov. 18, 2010) (''McDermott Dees Letter'').

[106] *See, e.g.,* Dorsey Letter; Comment Letter of McGuire Woods LLP (Nov. 18, 2010).

[107] *See, e.g.,* AICPA Letter; Davis Polk Letter; Dechert Letter.

commenters asked us to explicitly broaden the ownership requirement from ''family members'' to ''family clients'' to permit these types of arrangements. Other commenters argued more broadly that the ''wholly owned and controlled'' aspect of the proposed definition does not adequately reflect the variety of organizational arrangements already in place at family offices and that the Commission should focus as a policy matter solely on whether the family office is being operated for the benefit of members of a single family.[108]

Commenters persuaded us to expand who may own the family office from ''family members'' to ''family clients.'' This change is consistent with the intent behind our proposed language (which contemplated that the family could own the family office indirectly) and more clearly allows family members to structure their ownership of the family office for tax or other reasons. We also agree with suggestions that the rule permit key employees to own a non-controlling stake in the family office to serve as part of an incentive compensation package for key employees. We remain convinced, however, that for our core policy rationale to be fulfilled—that a family office is essentially a family managing its own wealth—the family, directly or indirectly, should control the family office. Accordingly, the final rule provides that while family clients may own the family office, family members and family entities (*i.e.,* their wholly owned companies or family trusts) must control the family office.[109]

3. Holding Out

As proposed, the final rule prohibits a family office relying on the rule from holding itself out to the public as an investment adviser.[110] Commenters supported this prohibition.[111] Holding itself out to the public as an investment adviser suggests that the family office is seeking to enter into typical advisory relationships with non-family clients, and thus is inconsistent with the basis on which we have provided exemptive orders and are adopting this rule.[112]

4. Multifamily Offices

The exclusion we are adopting today does not extend to family offices serving multiple families, as urged by several commenters.[113] Comments we received did not persuade us that the rule could be drafted to distinguish in any meaningful way between such offices and family-owned commercial advisory firms that offer their services to other families.[114] Moreover, they did not persuade us that the protections of the Advisers Act, including the application of the anti-fraud provisions of the Act, would not be relevant to a family obtaining services from an office established by another family with which it could have conflicts of interest. Families, of course, may have conflicts among members leading to disputes. But, as discussed in our Proposing Release, the premise of the exclusion is that such disputes could be worked out within the family unit or, if necessary, by state courts under laws that facilitate resolution of family disputes. In a multifamily office, these clients would be without the protections of the Advisers Act or family relationships for preventing or handling any discriminatory or fraudulent treatment of different families.

B. Grandfathering Provisions, Transition Period and Effect of Rule on Previously Issued Exemptive Orders

The Dodd-Frank Act prohibits us from excluding from our definition of family office persons not registered or required to be registered on January 1, 2010 that would meet all of the required conditions under rule 202(a)(11)(G)–1 but for their provision of investment advice to certain clients specified in section 409(b)(3) of the Dodd-Frank Act.[115] We have incorporated this required grandfathering into paragraph (c) of our rule.[116] We received two comments on such incorporation. One commenter suggested that we incorporate the grandfathering provision only by reference to section 409(b)(3) of the Dodd-Frank Act.[117] We believe that incorporating the grandfathering provision of Dodd-Frank Act is a more user friendly approach for those attempting to comply with the Advisers Act compared to directing them to look up the grandfathering provision in a separate statute. Another commenter requested clarification of the Dodd-Frank grandfathering provision.[118] We believe clarification or interpretation of this provision would involve applying the provision to specific facts, and this release is not an appropriate means to provide such a clarification. Therefore, we are adopting paragraph (c) of the rule as proposed.

Several commenters suggested that we provide a transition period to allow family offices time to determine whether they meet the exclusion or to restructure or register under the Advisers Act if they do not.[119] We recognize that the time period between the adoption of this rule and the repeal of the private adviser exemption from registration contained in section 203(b)(3) of the Advisers Act, effective July 21, 2011, may not be sufficient for every family office to conduct such an evaluation, restructure or register. Accordingly, the rule provides that family offices currently exempt from

[108] *See, e.g.,* Coalition Letter; Levin Schreder Letter; McDermott Dees Letter.

[109] We note that, as proposed, we are not limiting the exclusion to a family office that is not operated for the purpose of generating a profit. We also note that some family offices may be structured such that all or a portion of family client investment gains are distributed as dividends from the family office (when family clients own the family office) and that a not-for-profit requirement would preclude this family office structure. We were persuaded by several commenters who cautioned against limiting the exclusion for family offices to those that operate on a not-for-profit basis, arguing that it would be difficult to administer and is unnecessary given the limited clientele that a family office may advise and rely on the exclusion. *See, e.g.,* AICPA Letter; Davis Polk Letter; Kozusko Letter.

[110] Rule 202(a)(11)(G)–1(b)(3). For purposes of this rule, despite language under rule 203(b)(3)–1(c) regarding holding out, a family office could not market non-public offerings to persons or entities that are not family clients since such activity would not be consistent with a family office that only provides investment advice to family clients and does not hold itself out to the public as an investment adviser.

[111] *See, e.g.,* Coalition Letter; ABA letter.

[112] *See* footnote 56 of the Proposing Release, *supra* note 2. In response to one commenter's request, we clarify that a family office that is currently registered as an investment adviser and expects to de-register in reliance on rule 202(a)(11)(G)–1, will not be prohibited from relying on the rule solely because it held itself out to the public as an investment adviser while it was registered under the Advisers Act. *See* Dechert Letter.

[113] *See, e.g.,* Cadwalader Letter; Comment Letter of Lowenstein Sandler PC (Nov. 12, 2010); Comment Letter of Stradling Yocca Carlson & Rauth (Nov. 16, 2010).

[114] We note that under section 208(d) of the Advisers Act, it is unlawful for any person indirectly to do anything that would be unlawful for such person to do directly under the Advisers Act or rules thereunder. Therefore, if several families that are unrelated through a common ancestor within 10 generations have established a separate family office for each of the families, but have staffed these family offices with the same or substantially the same employees such employees are managing a *de facto* multifamily office. As a result, these family offices may not claim the family office exclusion.

[115] *See* section 409(b)(3) and (c) of the Dodd-Frank Act.

[116] We note that section 409(c) of the Dodd-Frank Act provides that ''a family office that would not be a family office, but for section 409(b)(3) of the Dodd-Frank Act, shall be deemed to be an investment adviser for the purposes of paragraphs (1), (2) and (4) of section 206 of the Advisers Act.'' This provision is reflected in paragraph (3) of rule 202(a)(11)(G)–1(c).

[117] Coalition Letter.

[118] AICPA Letter.

[119] *See, e.g.,* Lee & Stone Letter (to provide time to restructure certain ''club deals'' in which clients of the family office may have engaged); Comment Letter of Paul, Hastings, Janofsky & Walker LLP (Nov. 17, 2010) (requesting an expanded grandfather provision to allow more time for an orderly restructuring); Ropes & Gray Letter.

registration under the Advisers Act in reliance on the private adviser exemption and that do not meet the new family office exclusion are not required to register with the Commission as investment advisers until March 30, 2012.[120] We believe that this aspect of the rule is necessary or appropriate in the public interest and is consistent with the protection of investors, and the purposes fairly intended by the policy and provisions of the Advisers Act.

We have determined not to rescind exemptive orders previously issued to family offices under section 202(a)(11)(G) of the Advisers Act. As discussed above, the Commission has issued orders under section 202(a)(11)(G) of the Advisers Act to certain family offices declaring them and their employees acting within the scope of their employment to not be investment advisers within the intent of the Act. In some areas these exemptive orders may be slightly broader than the rule we are adopting today, and in other areas they may be narrower. We proposed not to rescind these exemptive orders and requested comment. All commenters addressing this subject supported our proposal. Thus, family offices currently operating under these orders may continue to rely on them.

III. Paperwork Reduction Act

Rule 202(a)(11)(G)–1 does not contain a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[121] Accordingly, the Paperwork Reduction Act is not applicable.

IV. Economic Analysis

We are adopting rule 202(a)(11)(G)–1 in anticipation of the Dodd-Frank Act's repeal of section 203(b)(3) of the Advisers Act, which provides an exemption from registration for certain private fund advisers, and in light of the Dodd-Frank Act's directive that the Commission define family offices that will be excluded from regulation under the Advisers Act.[122] The rule we are adopting today defines a family office as a company that, with limited exceptions, has only family clients, is wholly owned by family clients and controlled by family members and/or family entities, and does not hold itself out to the public as an investment adviser. The definition of family office provided in the rule is designed to limit the exclusion from Advisers Act regulation solely to those private advisory offices that we believe the Advisers Act was not designed to regulate and to prevent circumvention of the Adviser Act's protections by firms that are operating as commercial investment advisory firms.

As a preliminary matter, and as discussed earlier, as a result of the repeal of section 203(b)(3) of the Advisers Act a number of private advisory offices that may consider themselves to be family offices and that are not currently registered as investment advisers in reliance on that provision will be required to register under the Advisers Act after July 21, 2011 unless those advisers are eligible for a new exemption. The benefits and costs associated with the elimination of section 203(b)(3) are attributable to the Dodd-Frank Act. However, while Congress also adopted a family office exclusion, it directed the Commission to adopt rules defining the terms of that exclusion, subject to the terms of section 409 of the Dodd-Frank Act, and thus we discuss below the costs and benefits of our determination of which private advisory offices are deemed family offices and therefore excluded from regulation.

In proposing the rule, we requested comment on all aspects of our cost benefit analysis, including the accuracy of our estimates of costs and benefits, identification and assessment of any costs and benefits not discussed in our analysis, and data relevant to these costs and benefits.[123] While some commenters predicted that many private advisory offices would have to restructure or apply for an exemptive order and thus incur substantial costs if the definition of family office were not expanded,[124] no estimates of such costs were provided. We discuss these comments more specifically below.

A. Benefits

As discussed in the Proposing Release, we expect that rule 202(a)(11)(G)–1 will result in several important benefits. First, family offices, as defined by this rule, will not be subject to the mandatory costs of registering with the Commission as an investment adviser and the associated compliance costs. Some investment advisers currently registered with us may qualify as family offices under the rule and have the choice to deregister. These reduced regulatory costs should result in direct cost savings to these family offices, and thus to their family clients.

Second, the rule will benefit family offices, as defined by the rule, and their clients by eliminating the costs of seeking (and considering) individual exemptive orders. Without rule 202(a)(11)(G)–1, the repeal of the exemption contained in section 203(b)(3) would result in a great number of family offices having to apply for exemptive relief and thus incurring significant costs for these family offices and their clients. We estimate that a typical family office will incur legal fees of $200,000 on average to engage in the exemptive order application process, including preparation and revision of an application and consultations with Commission staff.[125] The rule will benefit family offices and their family clients by eliminating the costs of applying to the Commission for an exemptive order that the Commission would grant and the associated uncertainty that they might not obtain such an order. Estimates of the number of family offices in the United States vary widely—ranging from less than 1,000 to 5,000.[126] If all of these family offices qualify for the new exclusion and otherwise would have applied for an exemptive order, the rule will provide a benefit ranging from $200 million to $1 billion by eliminating the costs of applying for those exemptive orders.[127]

Finally, the rule also will benefit the Commission by freeing staff resources from reviewing and processing large

[120] Rule 202(a)(11)(G)–1(e)(2). *See also* Letter from Robert E. Plaze, Associate Director, Division of Investment Management, U.S. Securities and Exchange Commission, to David Massey, Deputy Securities Administrator, North Carolina Securities Division and President, NASAA (Apr. 8, 2011) *available at http://www.sec.gov/rules/proposed/2010/ia-3110-letter-to-nasaa.pdf* (stating that the Commission would potentially consider extending the date by which these advisers must register and come into compliance with the obligations of a registered adviser until the first quarter of 2012). Because initial applications for registration can take up to 45 days to be approved, family offices that determine they will need to register with the Commission should file a complete application, both Part 1 and a brochure(s) meeting the requirements of Part 2 of Form ADV, at least by February 14, 2012.

[121] 44 U.S.C. 3501 *et seq.*

[122] *See* section 409 of the Dodd-Frank Act.

[123] Section V of the Proposing Release.

[124] *See, e.g.,* Jones Day Letter; Withers Bergman Letter.

[125] We included the same estimate in the Proposing Release. We received no comments on this estimate.

[126] *See, e.g.,* Pamela J. Black, *The Rise of the Multi-Family Office,* Financial Planning (Apr. 27, 2010) (estimating 2,500 to 3,000 single family offices); Robert Frank, *Minding the Money—'Family Office' Chiefs Get Plied with Perks; Club Membership, Jets,* The Wall Street Journal (Sept. 7, 2007), at W2 (estimating 3,000 to 5,000 family offices in the United States); Second Annual Single-Family Office Study, the Family Wealth Alliance (2010) (estimating 2,500 U.S.-based single family offices); *Creating a Single Family Office for Wealth Creation and Family Legacy Sustainability,* Family Office Association (2009) (estimating 1,000 single family offices worldwide).

[127] $200,000 cost of applying for an exemptive order multiplied by a range of 1,000 family offices to 5,000 family offices.

numbers of family office exemptive applications resulting from the repeal of section 203(b)(3) of the Advisers Act that the Commission would grant and allowing the staff to target its work more efficiently, and thus will indirectly benefit public investors.

B. Costs

We recognize that some private advisory offices that today consider themselves to be family offices likely will incur expenses to evaluate whether they meet the terms of the exclusion. One commenter estimated that such an office would incur expenses of $25,000 to $35,000 to hire a consulting firm or law firm to determine if it meets the exclusion provided by the rule.[128] If all family offices estimated to exist in the United States noted above[129] hire a consulting firm or law firm to determine if they meet the exclusion at such a cost, they would incur an aggregate cost ranging from $25 million to $175 million for this evaluation.[130]

Some of these private advisory offices may decide to restructure their businesses to meet the conditions imposed by rule 202(a)(11)(G)–1. Many commenters stated that the proposed definition of family office was too narrow, and that if it was adopted without changes, absent an exemptive order, many such advisory offices would be required to restructure themselves in order to qualify as family offices.[131] Restructuring or obtaining an exemptive order, some commenters asserted, would result in substantial costs to the advisory office and its clients.[132] We expect that each such office will weigh the costs of such restructuring under its particular circumstances against the costs and burdens of registration or seeking an exemptive order.

Our final rule broadens the definition of ''family client'' and ''family office'' from that proposed, particularly concerning permissible clients of the family office and ownership of the family office.[133] As a result, we expect that substantially fewer private advisory offices will need to confront these trade-offs than would have been the case under our proposal. Nevertheless, we recognize that some offices may decide to restructure their businesses in order to meet even the expanded family office definition under the final rule, rather than register or seek an exemptive order. The costs of any such restructuring will be highly dependent on the nature and extent of the restructuring, which we understand may vary significantly from office to office. No commenters provided an estimate of the costs to carry out any necessary restructuring.

We do not expect that the rule will impose any significant costs on family offices currently operating under a Commission exemptive order. We are permitting these family offices to continue to rely on their exemptive orders. They may choose, of course, to qualify for exclusion under the rule. We expect that most of these family offices will satisfy all the conditions of the rule without changing their structure or operations. However, these family offices may incur one-time ''learning costs'' in determining the differences between their orders and the rule. We estimate that such costs will be no more than $5,000 on average for a family office if it hires an external consulting firm or law firm to assist in determining the differences. Because the terms of these advisers' exemptive orders were similar to rule 202(a)(11)(G)–1, these family offices should incur significantly lower costs to evaluate the new rule than family offices that do not have an exemptive order. There are 13 family offices that have obtained exemptive orders. Accordingly, we estimate that these family offices collectively would incur outside consulting or legal expenses of $65,000 to discern the differences between their orders and the rule.

Finally, if there were any family offices that previously registered with the Commission, but now may de-register in reliance on the new family office exclusion in the Advisers Act, the rule may have competitive effects on investment advisers that may compete with the family office for the provision of investment management services to family clients since these third party investment advisers would bear the regulatory costs associated with compliance with the Advisers Act or state investment adviser regulatory requirements. We do not expect that the rule will impact capital formation.

V. Final Regulatory Flexibility Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') regarding rule 202(a)(11)(G)–1 in accordance with section 604 of the Regulatory Flexibility Act.[134] We prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in conjunction with the Proposing Release in October 2010.[135]

A. Need for the Rule

We are adopting rule 202(a)(11)(G)–1 defining family offices excluded from regulation under the Advisers Act because we are required to do so under section 409 of the Dodd-Frank Act.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on the IRFA. None of the comment letters we received specifically addressed the IRFA. None of the comment letters made specific comments about the proposed rule's impact on smaller family offices.

C. Small Entities Subject to the Rule

Under Commission rules, for purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[136]

We do not have data and are not aware of any databases that compile information regarding how many family offices will be a small entity under this definition, but since family offices only are established for the very wealthy and given the statistics included in the Proposing Release showing that they generally serve families with at least $100 million or more of investable assets and have an average net worth of $517 million, we believe it is unlikely that any family offices would be small entities.[137]

[128] Lindquist Letter.

[129] *See supra* note 126 and accompanying text.

[130] ($25,000 evaluation cost) × (1,000 family offices) = $25 million. ($35,000 evaluation cost) × (5,000 family offices) = $175 million.

[131] *See, e.g.,* Lindquist Letter; Lee & Stone Letter; Withers Bergman Letter.

[132] *See, e.g.,* Coalition Letter; Lee & Stone Letter.

[133] *See* Section II of this Release for discussion of these expansions.

[134] 5 U.S.C. 604(a).

[135] *See* Proposing Release, *supra* note 2, at Section VI.

[136] 17 CFR 275.0–7(a).

[137] *See* Proposing Release, *supra* note 2, at n.2 and accompanying text. One commenter (Comment Letter of Robert Stenson (Oct. 18, 2010)) cited a 1999 survey which estimated that 32% of family offices had investment assets of less than $100 million. However, this commenter did not indicate how many family offices had assets under management of less than $25 million and thus qualified as ''small entities'' as defined in Advisers Act rule 0–7, *supra* note 136 and accompanying text.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Rule 202(a)(11)(G)–1 imposes no reporting, recordkeeping or other compliance requirements.

E. Agency Action To Minimize Effect on Smaller Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant impact on small entities. In connection with the rule, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

Rule 202(a)(11)(G)–1 is exemptive and compliance with the rule is voluntary. We therefore do not believe that different or simplified compliance, timetable, or reporting requirements, or an exemption from coverage of the rule for small entities, is appropriate. The conditions in the rule are designed to ensure that family offices operating under the rule provide advice only to the family itself and not the general public and, accordingly, the protections of the Advisers Act are not warranted. Reducing these conditions for smaller family offices would be inconsistent with the policy underlying the exclusion and would harm investor protection.

Our prior exemptive orders have not made any differentiation based on the size of the family office. In addition, as discussed above, we expect that very few, if any, family offices are small entities. The Commission also believes that rule 202(a)(11)(G)–1 will decrease burdens on small entities by making it unnecessary for most of them to seek an exemptive order from the Commission to operate without registration under the Advisers Act. As a result, we do not anticipate that the potential impact of the rule on small entities will be significant.

The rule specifies broad conditions with which a family office must comply to rely on the exclusion; the rule leaves to each family office how to structure its specific operations to meet these conditions. The rule thus already incorporates performance rather than design standards. For these reasons, alternatives to the rule appear unnecessary and in any event are unlikely to minimize any impact that the rule might have on small entities.

VI. Statutory Authority

We are adopting rule 202(a)(11)(G)–1 [17 CFR 275.202(a)(11)(G)–1] pursuant to our authority set forth in sections 202(a)(11)(G) and 206A of the Advisers Act [15 U.S.C. 80b–2(a)(11)(G) and 80b–6A].

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 275.202(a)(11)(G)–1 is added to read as follows:

§ 275.202(a)(11)(G)–1 Family offices.

(a) *Exclusion.* A family office, as defined in this section, shall not be considered to be an investment adviser for purpose of the Act.

(b) *Family office.* A family office is a company (including its directors, partners, members, managers, trustees, and employees acting within the scope of their position or employment) that:

(1) Has no clients other than family clients; provided that if a person that is not a family client becomes a client of the family office as a result of the death of a family member or key employee or other involuntary transfer from a family member or key employee, that person shall be deemed to be a family client for purposes of this section for one year following the completion of the transfer of legal title to the assets resulting from the involuntary event;

(2) Is wholly owned by family clients and is exclusively controlled (directly or indirectly) by one or more family members and/or family entities; and

(3) Does not hold itself out to the public as an investment adviser.

(c) *Grandfathering.* A family office as defined in paragraph (a) of this section shall not exclude any person, who was not registered or required to be registered under the Act on January 1, 2010, solely because such person provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to:

(1) Natural persons who, at the time of their applicable investment, are officers, directors, or employees of the family office who have invested with the family office before January 1, 2010 and are accredited investors, as defined in Regulation D under the Securities Act of 1933;

(2) Any company owned exclusively and controlled by one or more family members; or

(3) Any investment adviser registered under the Act that provides investment advice to the family office and who identifies investment opportunities to the family office, and invests in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office, and whose assets as to which the family office directly or indirectly provides investment advice represents, in the aggregate, not more than 5 percent of the value of the total assets as to which the family office provides investment advice; provided that a family office that would not be a family office but for this paragraph (c) shall be deemed to be an investment adviser for purposes of paragraphs (1), (2) and (4) of section 206 of the Act.

(d) *Definitions.* For purposes of this section:

(1) *Affiliated family office* means a family office wholly owned by family clients of another family office and that is controlled (directly or indirectly) by one or more family members of such other family office and/or family entities affiliated with such other family office and has no clients other than family clients of such other family office.

(2) *Control* means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of being an officer of such company.

(3) *Executive officer* means the president, any vice president in charge of a principal business unit, division or function (such as administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the family office.

(4) *Family client* means:

(i) Any family member;

(ii) Any former family member;

(iii) Any key employee;

(iv) Any former key employee, provided that upon the end of such individual's employment by the family office, the former key employee shall not receive investment advice from the family office (or invest additional assets

with a family office-advised trust, foundation or entity) other than with respect to assets advised (directly or indirectly) by the family office immediately prior to the end of such individual's employment, except that a former key employee shall be permitted to receive investment advice from the family office with respect to additional investments that the former key employee was contractually obligated to make, and that relate to a family-office advised investment existing, in each case prior to the time the person became a former key employee.

(v) Any non-profit organization, charitable foundation, charitable trust (including charitable lead trusts and charitable remainder trusts whose only current beneficiaries are other family clients and charitable or non-profit organizations), or other charitable organization, in each case for which all the funding such foundation, trust or organization holds came exclusively from one or more other family clients;

(vi) Any estate of a family member, former family member, key employee, or, subject to the condition contained in paragraph (d)(4)(iv) of this section, former key employee;

(vii) Any irrevocable trust in which one or more other family clients are the only current beneficiaries;

(viii) Any irrevocable trust funded exclusively by one or more other family clients in which other family clients and non-profit organizations, charitable foundations, charitable trusts, or other charitable organizations are the only current beneficiaries;

(ix) Any revocable trust of which one or more other family clients are the sole grantor;

(x) Any trust of which: Each trustee or other person authorized to make decisions with respect to the trust is a key employee; and each settlor or other person who has contributed assets to the trust is a key employee or the key employee's current and/or former spouse or spousal equivalent who, at the time of contribution, holds a joint, community property, or other similar shared ownership interest with the key employee; or

(xi) Any company wholly owned (directly or indirectly) exclusively by, and operated for the sole benefit of, one or more other family clients; provided that if any such entity is a pooled investment vehicle, it is excepted from the definition of ''investment company'' under the Investment Company Act of 1940.

(5) *Family entity* means any of the trusts, estates, companies or other entities set forth in paragraphs (d)(4)(v), (vi), (vii), (viii), (ix), or (xi) of this section, but excluding key employees and their trusts from the definition of family client solely for purposes of this definition.

(6) *Family member* means all lineal descendants (including by adoption, stepchildren, foster children, and individuals that were a minor when another family member became a legal guardian of that individual) of a common ancestor (who may be living or deceased), and such lineal descendants' spouses or spousal equivalents; provided that the common ancestor is no more than 10 generations removed from the youngest generation of family members.

(7) *Former family member* means a spouse, spousal equivalent, or stepchild that was a family member but is no longer a family member due to a divorce or other similar event.

(8) *Key employee* means any natural person (including any key employee's spouse or spouse equivalent who holds a joint, community property, or other similar shared ownership interest with that key employee) who is an executive officer, director, trustee, general partner, or person serving in a similar capacity of the family office or its affiliated family office or any employee of the family office or its affiliated family office (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the family office) who, in connection with his or her regular functions or duties, participates in the investment activities of the family office or affiliated family office, provided that such employee has been performing such functions and duties for or on behalf of the family office or affiliated family office, or substantially similar functions or duties for or on behalf of another company, for at least 12 months.

(9) *Spousal equivalent* means a cohabitant occupying a relationship generally equivalent to that of a spouse.

(e) *Transition.* (1) Any company existing on July 21, 2011 that would qualify as a family office under this section but for it having as a client one or more non-profit organizations, charitable foundations, charitable trusts, or other charitable organizations that have received funding from one or more individuals or companies that are not family clients shall be deemed to be a family office under this section until December 31, 2013, provided that such non-profit or charitable organization(s) do not accept any additional funding from any non-family client after August 31, 2011 (other than funding received prior to December 31, 2013 and provided in fulfillment of any pledge made prior to August 31, 2011).

(2) Any company engaged in the business of providing investment advice, directly or indirectly, primarily to members of a single family on July 21, 2011, and that is not registered under the Act in reliance on section 203(b)(3) of this title on July 20, 2011, is exempt from registration as an investment adviser under this title until March 30, 2012, provided that the company:

(i) During the course of the preceding twelve months, has had fewer than fifteen clients; and

(ii) Neither holds itself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), or a company which has elected to be a business development company pursuant to section 54 of that Act (15 U.S.C. 80a–54) and has not withdrawn its election.

Dated: June 22, 2011.

By the Commission.

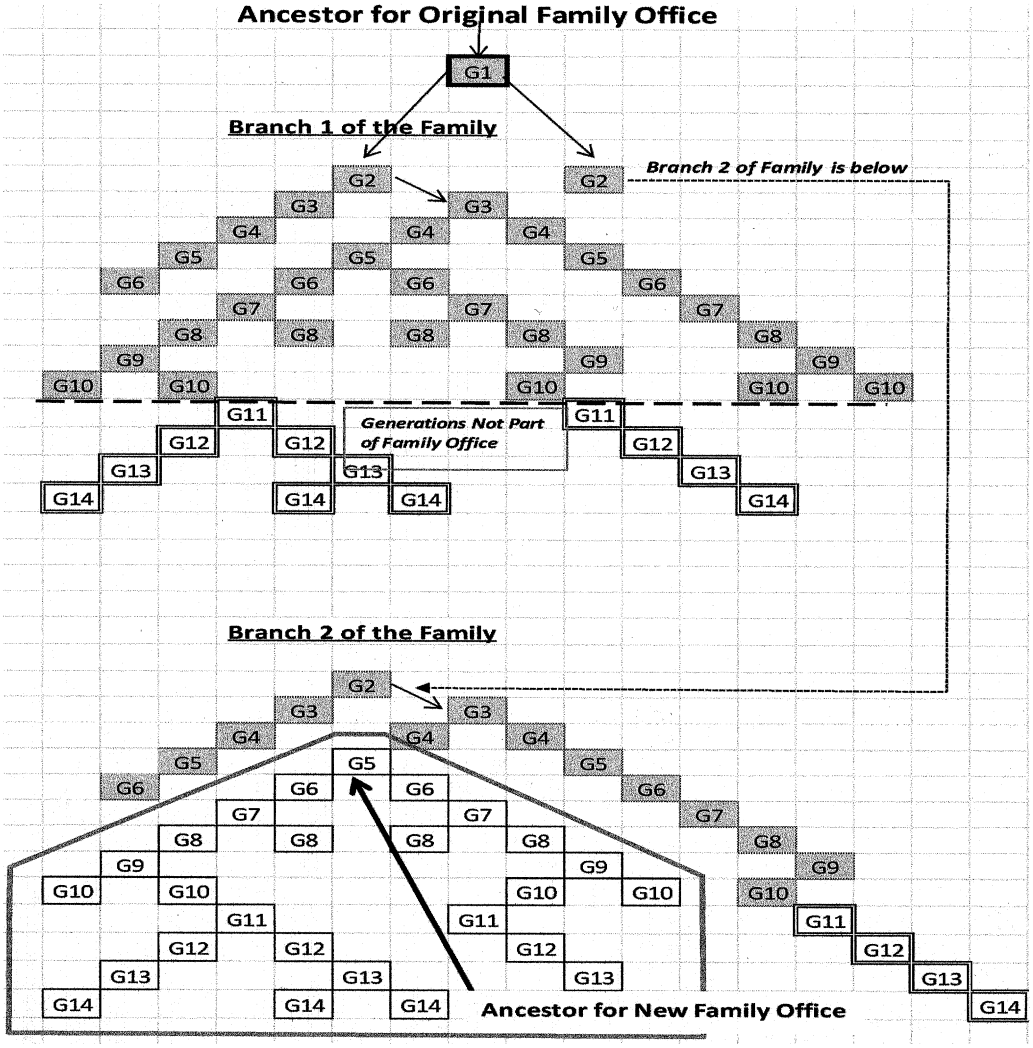
Elizabeth M. Murphy,

Secretary.

Note: The following Annex will not appear in the Code of Federal Regulations.

Annex A

The following diagram illustrates the effect of a family office redesignating its common ancestor. In the first chart, the shaded boxes indicate persons in various generations that are ''family members'' of the family office. The double-outlinedboxes indicate persons in various generations that are outside the 10-generation limit and thus may not be advised by the family office under the exclusion. The lower diagram shows the impact of redesignating the common ancestor from an individual in generation 1 to an individual in generation 5. The single-outlined boxes indicate the new group of family clients that the family office may advise and maintain its exclusion. The shaded boxes indicate individuals that previously the family office could advise, but that are no longer ''family members'' due to the redesignation. The double-outlined boxes indicate individuals that were too remote from the common ancestor in both cases to be considered ''family members.''



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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–117–FOR; OSM–2011–0006]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Interim rule with public comment period and opportunity for public hearing.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On May 2, 2011, the West Virginia Department of Environmental Protection (WVDEP) submitted a program amendment to OSM that includes both statutory and regulatory revisions. West Virginia submitted proposed permit fee revisions to the Code of West Virginia as authorized by House Bill 2955 that passed during the State's regular 2011 legislative session. In addition, West Virginia is amending its Code of State Regulations (CSR) to provide for the establishment of a minimum incremental bonding rate as authorized by Senate Bill 121. The changes, due to the passage of House Bill 2995, will increase the filing fee for the State's surface mining permit to $3,500 and establish various fees for other permitting actions. Senate Bill 121 authorizes regulatory revisions which includes, among other things, the establishment of a minimum incremental bonding rate of $10,000 per increment at CSR 38–2–11.4.a.2. Because these revisions have an effective date of June 16, 2011, we are approving the permit fees and the minimum incremental bonding rate on an interim basis, with our approval taking effect upon publication of this interim rule. This rule also requests public comments and provides an opportunity for a public hearing on the proposed statutory and regulatory revisions described herein. The other State regulatory revisions submitted by WVDEP with this amendment will be announced in another **Federal Register** notice and follow our normal program amendment procedures.

DATES: We will accept written comments on this amendment until 4 p.m. EDT, on July 29, 2011. If requested, we will hold a public hearing on the amendment on July 25, 2011. We will accept requests to speak until 4 p.m. EDT, on July 14, 2011.

ADDRESSES: You may submit comments, identified by ''WV–117–FOR; Docket ID: OSM–2011–0006'' by any of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The rule has been assigned Docket ID OSM–2011–0006. If you would like to submit comments

through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.

• *Mail/hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301.

Instructions: All submissions received must include the agency Docket ID (OSM–2011–0006) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see ''IV. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Docket: The interim rule and any comments that are submitted may be viewed over the Internet at *http://www.regulations.gov.* In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, *Telephone:* (304) 347–7158, *E-mail: chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 601 57th Street, SE., Charleston, West Virginia 25304, *Telephone:* (304) 926–0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Morgantown Area Office, Office of Surface Mining Reclamation and Enforcement, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, *Telephone:* (304) 291–4004. (By Appointment Only)

Beckley Area Office, Office of Surface Mining Reclamation and Enforcement, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, *Telephone:* (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, *Telephone:* (304) 347–7158. *E-mail: chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description and Submission of the Amendment
III. OSM's Findings
IV. Public Comment Procedures
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description and Submission of the Amendment

By letter dated April 25, 2011, and received by OSM on May 2, 2011 (Administrative Record Number WV–1557), the WVDEP submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment consists of both statutory and regulatory revisions.

Enrolled Committee Substitute for House Bill No. 2955 (HB 2955) includes revisions to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA). HB 2955 was adopted by the West Virginia Legislature on March 18, 2011, and approved by the Governor on April 5, 2011. HB 2955 increased the filing fee for the State's surface mining permit to $3,500, the permit renewal fee to $3,000, and established a notice of intent to prospect fee of $2,000, a significant permit revision fee of $2,000, a permit amendment fee of $550, a permit transfer fee of $1,500, a permit assignment fee of $1,500, and an inactive status approval fee of $2,000. HB 2955 also proposes to change ''director'' to ''secretary'' in accordance with a past reorganization of the WVDEP and make other non-substantive changes.

Enrolled Committee Substitute for Senate Bill No. 121 (SB 121) passed the West Virginia Legislature on March 18, 2011, and was signed by the Governor on March 30, 2011. SB 121 authorized WVDEP to promulgate several revisions to its Surface Mining Reclamation Regulations. SB 121 authorizes regulatory revisions which, among other things, provide for a minimum incremental bonding rate of $10,000 per increment at CSR 38–2–11.4.a.2. Section 22–3–11(a) of WVSCMRA currently requires mining operators to furnish a minimum bond of $10,000, regardless of acreage. Under the revised provision, an operator will have to post a minimum bond of $10,000 for each increment that is to be mined. Except for the regulatory revision at subdivision 11.4.a.2 that provides for a minimum incremental bonding rate, the other regulatory revisions will be acted upon following our normal program amendment procedures.

Because these changes have an effective date of June 16, 2011, the WVDEP requested that these revisions be approved by OSM on an interim basis and take effect immediately upon publication of this interim rule in the **Federal Register**. OSM will publish, under a separate **Federal Register** notice, a proposed rule and request comments on those other regulatory changes in the proposed State amendment that are not specifically addressed by this action.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Specifically, West Virginia requests that the following statutory and regulatory revisions identified below be approved on an interim basis.

1. WVSCMRA 22–3–7(b) Notice of Intent to Prospect. Notice of intention to prospect shall * * * be accompanied by * * * a filing fee of $2,000. This proposed State provision falls under the Federal provisions at section 512 of SMCRA and 30 CFR Part 772.

2. WVSCMRA 22–3–8(a)(4) New Permit. Each application for a new surface mining permit * * * shall be accompanied by a fee of $3,500. The State's permit fee was increased from $1,000 to $3,500. This proposed State revision falls under the Federal provisions at section 507(a) of SMCRA and 30 CFR 777.17.

3. *WVSCMRA 22–3–19(a)(4) Permit Renewal.* Any renewal application for an active permit shall be * * * accompanied by a filing fee of $3,000. The State's permit renewal fee was

increased from $2,000 to $3,000. This proposed State revision falls under the Federal provisions at section 507(a) of SMCRA and 30 CFR 777.17.

4. WVSCMRA 22–3–19(b)(2) Significant Permit Revision. An application for a significant revision of a permit * * * shall be accompanied by a filing fee of $2,000. The significant permit revision fee is new and was added to the State's statutory provisions. This proposed State revision falls under the Federal provisions at section 507(a) of SMCRA and 30 CFR 777.17.

5. WVSCMRA Code 22–3–19(b)(3) Permit Amendment. An application for a new area is subject to all procedures and requirements applicable to applications for original permits * * * and a filing fee of $550. The permit amendment fee is new and was added to the State's statutory provisions. This proposed State revision falls under the Federal provisions at section 507(a) of SMCRA and 30 CFR 777.17.

6. WVSCMRA Code 22–3–19(d) Permit Transfer or Assignment of Rights. No transfer, assignment or sale of the rights granted under any permit * * * may be made without the prior written approval of the secretary, application for which shall be accompanied by a filing fee of $1,500 for transfer or $1,500 for assignment. The permit transfer and assignment of rights fees are new and were added to the State's statutory provisions. These proposed State revisions fall under the Federal provisions at section 507(a) of SMCRA and 30 CFR 777.17.

7. WVSCMRA Code 22–3–19(e) Inactive Status Fee. Each request for inactive status shall be submitted on forms prescribed by the secretary, shall be accompanied by a filing fee of $2,000, and shall be granted in accordance with the procedure established in the *Surface Mining and Reclamation Rule.* The inactive status fee is new and was added to the State's statutory provisions. This proposed State revision falls under the provisions at section 507(a) of SMCRA and 30 CFR 777.17.

8. CSR 38–2–11.4.a.2 Incremental Bonding. If incrementally bonded, the minimum bond shall be $10,000 per increment. The proposed revision, which establishes a minimum incremental bonding rate, is new and was added to subdivision 11.4.a.2. This proposed State regulatory revision falls under the Federal bonding provisions at 30 CFR 800.14.

III. OSM's Findings

Effective upon publication of this interim rule, we are approving, on an interim basis, the revisions to Subsections 22–3–7(b), 22–3–8(a)(4), 22–3–19(a)(4), 22–3–19(b)(2), 22–3–19(b)(3), 22–3–19(d), and 22–2–19(e) of the WVSCMRA, which increase the filing fee for the surface mining permit to $3,500, the permit renewal fee to $3,000, and which establish a notice of intent to prospect fee of $2,000, a significant permit revision fee of $2,000, a permit amendment fee of $550, a permit transfer fee of $1,500, a permit assignment fee of $1,500, and an inactive status approval fee of $2,000.

Section 507(a) of SMCRA and 30 CFR 777.17 provide that a permit application must be accompanied by a fee that is determined by the regulatory authority. The fee cannot exceed the actual or anticipated cost of reviewing, administering, and enforcing the State permit, and it can be paid over the term of the permit. We find that the proposed fees for the various permitting actions mentioned above are in accordance with section 507(a) of SMCRA and do not render the West Virginia program less effective than the Federal requirements at 30 CFR 777.17, and can be approved. Further, the notice of intention to prospect fee is in accordance with section 512 of SMCRA and no less effective than the Federal coal exploration requirements at 30 CFR Part 772, and can be approved.

In addition, we are approving, on an interim basis, the regulatory revision at CSR 38–2–11.4.a.2 which provides for a minimum incremental bonding rate of $10,000 per increment. We find that the State's proposed incremental bonding rate is no less effective than the Federal bonding requirements at 30 CFR 800.14, and can be approved.

Because our approval of these revisions is on an interim basis, and in order to satisfy our state program amendment public participation requirements at 30 CFR 732.17(h), we will accept comments on these proposed fee changes and the minimum incremental bonding rate in accordance with Section IV of this **Federal Register** notice. Following our review of the comments received, we will issue a final rule announcing OSM's final decision on the statutory and regulatory revisions that are the subject of this interim rule.

Pursuant to the Administrative Procedure Act at 5 U.S.C. 553(b)(3)(B), we find that good cause exists to approve the statutory revisions at Subsections 22–3–7(b), 22–3–8(a)(4), 22–3–19(a)(4), 22–3–19(b)(2), 22–3–19(b)(3), 22–3–19(d), and 22–3–19(e) of the WVSCMRA and the regulatory revision at CSR 38–2–11.4.a.2 on an interim basis without notice and opportunity for comment, because to require notice and opportunity for comment now would be contrary to the public interest in that the permit fees and the incremental bonding rate are due to take effect on June 16, 2011, and it would delay the start of the collection of the permit fees and the incremental bonding rate.

State permit fees provide a source of revenue for the State to administer its permanent regulatory program. It is in the public's interest that these increased and new permit fees be implemented without further delay. Any delay in the implementation of these fees may require the State to fund the program with general revenue funds that may be needed for other public purposes. States are encouraged to make the funding of their regulatory programs self sufficient through the use of permit and other fees imposed on the mining industry.

In addition, bonds are used by the State to perform bond forfeiture reclamation. Rather than posting the total bond amount for each operation, more operators are using incremental bonding to reduce the total amount of bonds that they are required to furnish. To ensure that the incremental bond will be sufficient to cover the full cost of reclamation in the event of forfeiture, the State is requiring operators to post a minimum bond of $10,000 per increment. It is in the public's interest that the minimum incremental bonding rate becomes effective immediately to ensure that the State will have sufficient revenue to cover the cost of any bond forfeiture reclamation that may be required under the State's alternative bonding system.

As explained above, the public will still have an opportunity to comment on these proposed changes before we announce a final decision on them in the **Federal Register** at a later date. In addition, the other State program amendment revisions that are not specifically addressed by this action will be announced in a separate **Federal Register** notice.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

Written Comments

Send your written comments to OSM at one of the addresses given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your

recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**).

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on July 14, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is limited interest in participation in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

V. OSM's Decision

Based on the above findings, we are approving on an interim basis, the specific revisions outlined above to the West Virginia program as provided to us on May 2, 2011. To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this interim rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. In addition, SMCRA requires consistency of State and Federal mining and reclamation standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that

require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 2011.

Thomas D. Shope,

Regional Director, Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.15 is amended by adding a new entry to the table in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
* *	* *	* * *
May 2, 2011	June 29, 2011	W. Va. Code 22–3–7(b); 8(a)(4); 19(a)(4); 19(b)(2); 19(b)(3); 19(d); and 19(e) (interim approvals). CSR 38–2–11.4.a.2 (interim approval).

[FR Doc. 2011–16261 Filed 6–28–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 585, 586, and 587

Removal of Certain Sanctions Regulations Relating to the Former Federal Republic of Yugoslavia

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is removing from the Code of Federal Regulations the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, the Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations, and the Federal Republic of Yugoslavia (Serbia and Montenegro) Milosevic Sanctions Regulations. Pursuant to Executive Order 13304 of May 28, 2003, the national emergencies with respect to which these regulations had been issued were terminated, and all related Executive orders that had been implemented by these regulations were revoked. In addition, since the date of Executive Order 13304, the successor states to the former Socialist Federal Republic of Yugoslavia have reached an agreement concerning the division of assets of the former Socialist Federal Republic of Yugoslavia, and the statutes of limitations for other claims have run.

DATES: *Effective Date:* June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, *tel.:* 202–622–2490, Assistant Director for Licensing, *tel.:* 202–622–2480, Assistant Director for Policy, *tel.:* 202–622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), *tel.:* 202–622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on demand service, *tel.:* 202–622–0077.

Background

On May 28, 2003, the President issued Executive Order 13304 (68 FR 32315, May 29, 2003), invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (''IEEPA'') and the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (the ''NEA''). In this order, the President determined that the situations that gave rise to the national emergencies declared in Executive Order 12808 of May 30, 1992 (57 FR 23299, June 2, 1992), and Executive Order 13088 of June 9, 1998 (63 FR 32109, June 12, 1998), with respect to the former Socialist Federal Republic of Yugoslavia have been significantly altered by the peaceful transition to

democracy and other positive developments in Serbia and Montenegro (formerly the Federal Republic of Yugoslavia (Serbia and Montenegro) (''FRY(S&M)'')). Executive Order 13304 terminated the national emergencies with respect to the former Socialist Federal Republic of Yugoslavia declared in those orders and revoked those and all related orders, including Executive Order 12810 of June 5, 1992 (57 FR 24347, June 9, 1992), Executive Order 12831 of January 15, 1993 (58 FR 5253, January 21, 1993), Executive Order 12846 of April 25, 1993 (58 FR 25771, April 27, 1993), Executive Order 12934 of October 25, 1994 (59 FR 54117, October 27, 1994), Executive Order 13121 of April 30, 1999 (64 FR 24021, May 5, 1999), and Executive Order 13192 of January 17, 2001 (66 FR 7379, January 23, 2001).

In Executive Order 12808 of May 30, 1992, the President, invoking the authority of, *inter alia,* IEEPA and the NEA, had declared a national emergency with respect to actions and policies of the Governments of Serbia and Montenegro, acting under the name of the Socialist Federal Republic of Yugoslavia or the Federal Republic of Yugoslavia, in their involvement in and support for groups attempting to seize territory in Croatia and Bosnia-Herzegovina by force and violence. In Executive Order 12934 of October 25, 1994, the President expanded the scope of this national emergency to address the policies and actions of the Bosnian Serb forces and the authorities in the territory they controlled. To implement Executive Order 12808, OFAC issued the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, 31 CFR part 585 (58 FR 13201, March 10, 1993). These regulations were later renamed the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 CFR part 585 (60 FR 34114, June 30, 1995) (the ''Part 585 Regulations''), when they were amended to implement Executive Order 12934. The Part 585 Regulations required the blocking of all property and interests in property that were in the United States or within the possession or control of United States persons, including overseas branches, of the Governments of Serbia and Montenegro, in the name of the Governments of the Socialist Federal Republic of Yugoslavia or the Federal Republic of Yugoslavia, or of Bosnian Serb military and paramilitary forces, authorities, and entities.

In Executive Order 13088 of June 9, 1998, the President, invoking the authority of, *inter alia,* IEEPA and the NEA, had declared a national emergency with respect to the actions and policies of the Governments of the FRY(S&M) and the Republic of Serbia with respect to Kosovo, which, by promoting ethnic conflict and human suffering, threatened to destabilize the countries of the region and to disrupt progress in Bosnia and Herzegovina in implementing the Dayton peace agreement. To implement Executive Order 13088, OFAC issued the Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations, 31 CFR part 586, (63 FR 54576, October 13, 1998) (the ''Part 586 Regulations''). The Part 586 Regulations required the blocking of all property and interests in property that were in the United States or within the possession or control of United States persons, including overseas branches, of the Governments of the FRY(S&M), the Republic of Serbia, and the Republic of Montenegro.

On January 17, 2001, the President issued Executive Order 13192, invoking the authority of, *inter alia,* IEEPA, the NEA, and section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (the ''UNPA''). In Executive Order 13192, the President amended Executive Order 13088 to lift the blocking of property of the Governments of the FRY(S&M), the Republic of Serbia, and the Republic of Montenegro, revoke the trade and investment sanctions against these governments and the FRY(S&M), and introduce new measures to support the work of the International Criminal Tribunal for the former Yugoslavia (''ICTY''), address the illegitimate control over FRY(S&M) political institutions and economic resources or enterprises exercised by former President Slobodan Milosevic and his associates, and counter continuing threats to regional stability and implementation of the Dayton peace agreement. The new measures targeted persons under open indictment by the ICTY and persons exercising illegitimate control over FRY(S&M) political processes or institutions or economic resources or enterprises. To implement the new measures imposed by Executive Order 13192, OFAC issued the Federal Republic of Yugoslavia (Serbia and Montenegro) Milosevic Sanctions Regulations, 31 CFR part 587 (66 FR 50511, October 3, 2001) (the ''Part 587 Regulations''). The Part 587 Regulations required the blocking of all property and interests in property that were in the United States or within the possession or control of United States persons, including overseas branches, of (i) persons listed in the Annex to Executive Order 13192 and (ii) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be under open indictment by the ICTY, subject to applicable laws and procedures, or to have sought, or to be seeking, to maintain or reestablish illegitimate control over the political processes or institutions or the economic resources or enterprises of the FRY(S&M), the Republic of Serbia, the Republic of Montenegro, or the territory of Kosovo.

In 2001–2002, before the date of Executive Order 13304, OFAC had issued a series of general licenses and regulatory amendments that had authorized, with certain exceptions, most transactions otherwise prohibited by the Part 585 Regulations and the Part 586 Regulations, and had unblocked most property previously blocked pursuant to those regulations, with the exception of property and interests in property of: (i) Diplomatic and/or consular missions of the former Socialist Federal Republic of Yugoslavia; (ii) persons subject to sanctions under the Western Balkans Stabilization Regulations, 31 CFR part 588, or otherwise subject to sanctions under other parts of 31 CFR chapter V; and (iii) the central bank of the former Socialist Federal Republic of Yugoslavia, *i.e.,* the National Bank of Yugoslavia, blocked pursuant to the Part 585 Regulations.

Section 1 of Executive Order 13304 provides that, pursuant to section 202 of the NEA (50 U.S.C. 1622), termination of the national emergencies declared in Executive Orders 12808 and 13088 shall not affect any action taken or proceeding pending not finally concluded or determined as of the effective date of Executive Order 13304 (May 29, 2003), or any action or proceeding based on any act committed prior to such date or any rights or duties that matured or penalties that were incurred prior to such date.

In addition, section 1 of Executive Order 13304 invokes the authority of section 207 of IEEPA (50 U.S.C. 1706). Section 207(a) of IEEPA allows the President to continue to prohibit transactions involving property in which a foreign country or national thereof has an interest after a national emergency has been terminated if the President determines that the continuation of such a prohibition with respect to that property is necessary on account of claims involving such country or its nationals. Pursuant to section 207(a) of IEEPA, the President determined in section 1 of Executive

Order 13304 that continuation of prohibitions with regard to transactions involving property blocked pursuant to Executive Orders 12808 or 13088 that continued to be blocked as of May 29, 2003 (the effective date of Executive Order 13304), was necessary on account of claims involving successor states to the former Socialist Federal Republic of Yugoslavia or other potential claimants.

Since the effective date of Executive Order 13304, the successor states to the former Socialist Federal Republic of Yugoslavia have reached an agreement concerning the division of assets of the former Socialist Federal Republic of Yugoslavia.

Accordingly, OFAC is removing the Federal Republic of Yugoslavia (Serbia & Montenegro) and Bosnian Serb-controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 CFR part 585, the Federal Republic of Yugoslavia (Serbia & Montenegro) Kosovo Sanctions Regulations, 31 CFR part 586, and the Federal Republic of Yugoslavia (Serbia & Montenegro) Milosevic Sanctions Regulations, 31 CFR part 587, from 31 CFR chapter V. The removal of these three parts from 31 CFR chapter V does not affect ongoing enforcement proceedings or prevent the initiation of enforcement proceedings where the relevant statute of limitations has not run.

Please note that certain transactions relating to the Western Balkans region remain subject to Executive Order 13219 of June 26, 2001, Executive Order 13304 of May 28, 2003, and the Western Balkans Stabilization Regulations, 31 CFR part 588 (the ''WBSR''), and property and interests in property blocked pursuant to those Executive Orders and regulations remain blocked. In a separate final rule also published today, OFAC is amending the WBSR to implement Executive Order 13304 and to make other changes.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 of September 30, 1993, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

List of Subjects

31 CFR Part 585

Administrative practice and procedure, Banking and finance, Blocking of assets, Exports, Federal Republic of Yugoslavia (Serbia and Montenegro), Foreign trade, Imports, Intellectual property, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Shipping, Telecommunications, Transfer of assets, Vessels.

31 CFR Part 586

Administrative practice and procedure, Banks, Banking, Blocking of assets, Federal Republic of Yugoslavia (Serbia & Montenegro), Investments, Kosovo, Montenegro, New investment, Penalties, Reporting and recordkeeping requirements, Serbia.

31 CFR Part 587

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Federal Republic of Yugoslavia (Serbia & Montenegro), Investments, Milosevic, Penalties, Reporting and recordkeeping requirements, Securities, Services.

PARTS 585, 586, AND 587—[REMOVED]

For the reasons set forth in the preamble, under the authority of Executive Order 13304 (68 FR 32315, May 29, 2003) and 50 U.S.C. 1701 *et seq.,* the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR chapter V by removing parts 585, 586, and 587.

Dated: June 16, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control, Department of the Treasury.

[FR Doc. 2011–15638 Filed 6–28–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 588

Western Balkans Stabilization Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is amending and reissuing in their entirety the Western Balkans Stabilization Regulations, part 588 of 31 CFR chapter V, to implement Executive Order 13304 of May 28, 2003, and to make additional conforming and technical changes to the regulations.

DATES: *Effective Date:* June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, *tel.:* 202/622–2490, Assistant Director for Licensing, *tel.:* 202/622–2480, Assistant Director for Policy, *tel.:* 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), *tel.:* 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On June 26, 2001, the President issued Executive Order 13219 (66 FR 34777, June 29, 2001) (''E.O. 13219''), invoking the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA'') and the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (the ''NEA''). In E.O. 13219, the President determined that the actions of persons engaged in, or assisting, sponsoring, or supporting, (i) extremist violence in the former Yugoslav Republic of Macedonia, southern Serbia, the Federal Republic of Yugoslavia, and elsewhere in the Western Balkans region, or (ii) acts obstructing implementation of the Dayton Accords in Bosnia or United Nations Security Council Resolution (''UNSCR'') 1244 of June 10, 1999, in Kosovo, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat. E.O. 13219 blocked, with certain exceptions, all property and interests in property that were in the United States, that came within the United States, or that were or came within the possession or control of United States persons, of persons listed in the Annex to E.O. 13219 or designated by the Secretary of the Treasury, in consultation with the Secretary of State, pursuant to criteria set forth in E.O. 13219. E.O. 13219 also prohibited any transaction by a U.S. person that evades or avoids, has the purpose of evading or avoiding, or

attempts to violate any of the prohibitions set forth in E.O. 13219, as well as any conspiracy formed to violate such prohibitions.

Acting under authority delegated by the Secretary of the Treasury, OFAC promulgated the Western Balkans Stabilization Regulations, 31 CFR part 588 (67 FR 37671, May 30, 2002) (the ''WBSR''), to implement E.O. 13219.

On May 28, 2003, the President issued Executive Order 13304 (68 FR 32315, May 29, 2003) (''E.O. 13304''), invoking the authority of, *inter alia,* IEEPA, the NEA, and section 5 of the United Nations Participation Act (22 U.S.C. 287c) (the ''UNPA''). In E.O. 13304, the President first determined that the situations that gave rise to the national emergencies declared in Executive Order 12808 of May 30, 1992 (57 FR 23299, June 2, 1992), and Executive Order 13088 of June 9, 1998 (63 FR 32109, June 12, 1998), with respect to the former Socialist Federal Republic of Yugoslavia had been significantly altered by the peaceful transition to democracy and other positive developments in Serbia and Montenegro, terminated the national emergencies declared in those orders, and revoked those and all related orders. Section 1 of E.O. 13304 invokes certain residual authorities of the NEA and IEEPA with respect to the terminated national emergencies. In a separate final rule also published today, OFAC is removing from the Code of Federal Regulations those regulations that implemented the orders revoked by E.O. 13304, parts 585 through 587 of 31 CFR chapter V.

In E.O. 13304, the President then took additional steps with respect to continuing, widespread, and illicit actions obstructing implementation of the Ohrid Framework Agreement of 2001 relating to Macedonia, UNSCR 1244 relating to Kosovo, or the Dayton Accords relating to Bosnia and Herzegovina, including the harboring of individuals indicted by the International Criminal Tribunal for the former Yugoslavia, and with respect to the national emergency described and declared in E.O. 13219. E.O. 13304 amended E.O. 13219 to expand and clarify the scope of persons targeted by the blocking sanctions.

Section 2 of E.O. 13304 provides that the Annex to E.O. 13219 is replaced and superseded in its entirety by the Annex to E.O. 13304. Section 3 of E.O. 13304 revises section 1(a) and 1(b) of E.O. 13219. As so amended, section 1(a) of E.O. 13219 now blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of United States persons, of: (i) Persons listed in the Annex to the order, as amended by E.O. 13304, and (ii) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, because they are determined: (A) To be under open indictment by the International Criminal Tribunal for the former Yugoslavia (the ''ICTY''), unless circumstances warrant otherwise; (B) to have committed, or to pose a significant risk of committing, acts of violence that have the purpose or effect of threatening the peace in or diminishing the stability or security of any area or state in the Western Balkans region, undermining the authority, efforts, or objectives of international organizations or entities present in the region, or endangering the safety of persons participating in or providing support to the activities of those international organizations or entities; (C) to have actively obstructed, or pose a significant risk of actively obstructing, the Ohrid Framework Agreement of 2001 relating to Macedonia, UNSCR 1244 relating to Kosovo, or the Dayton Accords or the Conclusions of the Peace Implementation Conference held in London on December 8–9, 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council or its Steering Board, relating to Bosnia and Herzegovina; (D) to have materially assisted in, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such acts of violence or obstructionism or any person listed in or designated pursuant to E.O. 13219, as amended by E.O. 13304; or (E) to be owned or controlled by, or acting or purporting to act directly or indirectly for or on behalf of, any person listed in or designated pursuant to E.O. 13219, as amended by E.O. 13304.

Section 1(b) of E.O. 13219, as amended by section 3 of E.O. 13304, clarifies that the President's determination—that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) (*i.e.,* donations of certain articles, such as food, clothing, and medicine, intended to be used to relieve human suffering) would seriously impair the ability to deal with the national emergency declared in E.O. 13219—applies to such donations by or to persons whose property and interests in property are blocked pursuant to E.O. 13219, as amended by E.O. 13304, and that such donations therefore are prohibited.

Section 5 of E.O. 13304 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA, as may be necessary to carry out the purposes of E.O. 13304. Section 5 of E.O. 13304 also provides that the Secretary of the Treasury may redelgate any of these functions to other officers and agencies of the U.S. Government.

Acting under authority delegated by the Secretary of the Treasury, OFAC today is amending the WBSR to implement E.O. 13304 and to make additional conforming and technical changes to the regulations. Due to the extensive nature of these amendments, OFAC is reissuing the WBSR in their entirety.

Section 588.201 of subpart B of the WBSR has been revised to make it consistent with section 1 of E.O. 13219, as amended by section 3 of E.O. 13304.

New section 588.312, has been added to subpart C of the WBSR, to define the term ''financial, material, or technological support,'' as used in revised section 588.201(a)(2)(iv) of the WBSR, to mean any property, tangible or intangible, and to include a list of specific examples. Please note that, in adding new section 588.312 to the WBSR, OFAC does not imply any limitation on the scope of paragraphs (a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), or (a)(2)(v) of section 588.201. Furthermore, the designation criteria in these paragraphs, as well as in paragraph (a)(2)(iv) of section 588.201, will be applied in a manner consistent with pertinent federal law, including, where applicable, the First Amendment to the United States Constitution.

A new section 588.411 has been added to subpart D of the WBSR to incorporate guidance, issued by OFAC on February 14, 2008, titled ''Entities Owned by Persons Whose Property and Interests in Property Are Blocked.'' A note referencing this section has been added to section 588.301 of subpart C.

Section 588.507 of Subpart E of the WBSR has been revised to incorporate the provisions of General License No. 1, issued by OFAC on July 9, 2003, which authorized the provision of professional legal services relating to the representation of persons in matters pending before the International Criminal Tribunal for the former Yugoslavia.

This final rule also makes additional conforming and technical changes to the WBSR.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 of September 30, 1993, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in 31 CFR Part 588

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Penalties, Reporting and recordkeeping requirements, Securities, Services, Western Balkans.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control revises part 588 of 31 CFR chapter V to read as follows:

PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

588.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

588.201 Prohibited transactions involving blocked property.
588.202 Effect of transfers violating the provisions of this part.
588.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
588.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
588.205 Evasions; attempts; conspiracies.

Subpart C—General Definitions

588.301 Blocked account; blocked property.
588.302 Effective date.
588.303 Entity.
588.304 Interest.
588.305 Licenses; general and specific.
588.306 Person.
588.307 Property; property interest.
588.308 Transfer.
588.309 United States.
588.310 U.S. financial institution.
588.311 United States person; U.S. person.
588.312 Financial, material, or technological support.

Subpart D—Interpretations

588.401 Reference to amended sections.
588.402 Effect of amendment.
588.403 Termination and acquisition of an interest in blocked property.
588.404 Transactions ordinarily incident to a licensed transaction.
588.405 Provision of services.
588.406 Offshore transactions.
588.407 Payments from blocked accounts to satisfy obligations prohibited.
588.408 Charitable contributions.
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588.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13219, 66 FR 34777, 3 CFR, 2001 Comp., p. 778; E.O. 13304, 68 FR 32315, 3 CFR, 2004 Comp. p. 229.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 588.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 588.201 Prohibited transactions involving blocked property.

(a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13219 of June 26, 2001 (66 FR 34777, 3 CFR, 2001 Comp., p.778), as amended by Executive Order 13304 of May 28, 2003 (68 FR 32315, 3 CFR, 2004 Comp. p. 229); and

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be under open indictment by the International Criminal Tribunal for the former Yugoslavia, unless circumstances warrant otherwise; or

(ii) To have committed, or to pose a significant risk of committing, acts of violence that have the purpose or effect of threatening the peace in or diminishing the stability or security of any area or state in the Western Balkans region, undermining the authority, efforts, or objectives of international organizations or entities present in the region, or endangering the safety of persons participating in or providing support to the activities of those international organizations or entities; or

(iii) To have actively obstructed, or pose a significant risk of actively

obstructing, the Ohrid Framework Agreement of 2001 relating to Macedonia, United Nations Security Council Resolution 1244 relating to Kosovo, or the Dayton Accords or the Conclusions of the Peace Implementation Conference held in London on December 8–9, 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council or its Steering Board, relating to Bosnia and Herzegovina; or

(iv) To have materially assisted in, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such acts of violence or obstructionism or any person whose property and interests in property are blocked pursuant to this paragraph (a); or

(v) To be owned or controlled by, or acting or purporting to act directly or indirectly for or on behalf of, any person whose property and interests in property are blocked pursuant to this paragraph (a).

Note 1 to paragraph (a) of § 588.201: The names of persons listed in or designated pursuant to Executive Order 13219, as amended by Executive Order 13304, whose property and interests in property are blocked pursuant to paragraph (a) of this section, are published on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN'' list) (which is accessible via the Office of Foreign Assets Control's Web site), published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier ''[BALKANS].'' See § 588.411 concerning entities that may not be listed on the SDN list but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 588.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published on the SDN list, published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier ''[BPI–BALKANS].''

Note 3 to paragraph (a) of § 588.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

(d) The prohibitions in paragraph (a) of this section apply except to the extent transactions are authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date.

§ 588.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 588.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 588.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 588.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 588.201(a).

§ 588.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (e) or (f) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 588.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 588.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 588.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 588.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 588.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 588.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 588.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 588.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

Subpart C—General Definitions

§ 588.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 588.201 held in the name of a person whose property and interests in property are blocked pursuant to § 588.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

Note to § 588.301: See § 588.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 588.201(a).

§ 588.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a)(1) With respect to a person whose property and interests in property are blocked pursuant to § 588.201(a)(1), whose name appeared on the Annex to Executive Order 13219 as originally issued and also appeared on the Annex to Executive Order 13304, 12:01 a.m. eastern daylight time on June 27, 2001;

(2) With respect to a person whose property and interests in property are blocked pursuant to § 588.201(a)(1), whose name first appeared on the Annex to Executive Order 13304, which replaced and superseded the Annex to Executive Order 13219, 12:01 a.m. eastern daylight time on May 29, 2003; and

(b) With respect to a person whose property and interests in property are blocked pursuant to § 588.201(a)(2), the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 588.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 588.304 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* ''an interest in

property''), means an interest of any nature whatsoever, direct or indirect.

§ 588.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 588.305: See § 501.801 of this chapter on licensing procedures.

§ 588.306 Person.

The term *person* means an individual or entity.

§ 588.307 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 588.308 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 588.309 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 588.310 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, or commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 588.311 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 588.312 Financial, material, or technological support.

The term *financial, material, or technological support,* as used in § 588.201(a)(2)(iv) of this part, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

Subpart D—Interpretations

§ 588.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 588.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 588.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no

longer be deemed to be property blocked pursuant to § 588.201(a), unless there exists in the property another interest that is blocked pursuant to § 588.201(a), the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 588.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 588.404 Transactions ordinarily incident to a licensed transaction.

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(1) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 588.201(a); or

(2) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(b) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 588.201(a), to complete a securities sale also authorizes other parties to engage in activities that are ordinarily incident and necessary to complete the sale, including transactions by the buyer, broker, transfer agents, and banks, provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 588.201(a).

§ 588.405 Provision of services.

(a) Except as provided in § 588.206, the prohibitions on transactions involving blocked property contained in § 588.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 588.201(a); or

(2) With respect to property interests subject to § 588.201.

(b) *Example.* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 588.201(a).

Note to § 588.405: See §§ 588.507 and 588.508 on licensing policy with regard to the provision of certain legal and medical services.

§ 588.406 Offshore transactions.

The prohibitions in § 588.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 588.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 588.201(a) has or has had an interest since the effective date.

§ 588.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 588.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 588.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing or medicine, may be made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 588.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 588.201(a) if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from any such person.

§ 588.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 588.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 588.201(a).

§ 588.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 588.201 if effected after the effective date.

§ 588.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 588.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 588.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13219, as amended by Executive Order 13304, or designated pursuant to § 588.201(a)(2).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 588.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 588.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 588.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 588.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 588.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note to § 588.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 588.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 588.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 588.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 588.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 588.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.,* through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 588.201(a).

§ 588.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 588.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision by a U.S. person of professional legal services relating to the representation of persons whose property and interests in property are blocked pursuant to § 588.201(a) in matters pending before the International Criminal Tribunal for the former Yugoslavia (the ''ICTY'') is authorized. With respect to such representation, receipt of payment of professional fees and reimbursement of incurred expenses are authorized if such payments and reimbursements are made by the ICTY. Such payments and reimbursements from any other source must be specifically licensed.

(c) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 588.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 588.201(a) is prohibited unless licensed pursuant to this part.

§ 588.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 588.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 588.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 588.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

Note to paragraph (a)(1) of § 588.701: As of the date of publication in the **Federal Register** of the final rule amending this part, *inter alia,* to implement Executive Order 13304 (June 29, 2011), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (''UNPA''), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(d) Violations involving transactions described at section 203(b)(1), (3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (c) of this section.

(e) Attention is also directed to 18 U.S.C. 1001, which provides that ''whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry'' shall be fined under title 18, United States Code, imprisoned, or both.

(f) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 588.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see Appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a Federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see Appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the

alleged violator in care of the representative.

§ 588.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

§ 588.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 588.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 588.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13219 of June 26, 2001 (66 FR 34777, June 29, 2001), Executive Order 13304 of May 28, 2003 (68 FR 32315, May 29, 2003), and any further Executive orders relating to the national emergency declared in Executive Order 13219, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 588.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: June 16, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–15643 Filed 6–28–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0114]

RIN 1625–AA00

Safety Zone; Hylebos Bridge Restoration, Hylebos Waterway, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary safety zone extending 50 yards to the north and south of the Hylebos Bridge, Tacoma, WA in both directions along the entire length of the Hylebos Bridge to ensure the safety of the boating public during the Hylebos Bridge restoration project. This safety zone is necessary to protect vessels transiting in the vicinity of the Hylebos Bridge from falling debris resulting from concrete removal performed as part of the bridge restoration.

DATES: This rule is effective from 6 a.m. on August 20, 2011 through 6 p.m. on August 22, 2011. The rule will be enforced daily from 6 a.m. until 6 p.m. from August 20, 2011 through August 22, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0114 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0114 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 18, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; 2011 Hylebos Bridge Restoration, Hylebos Waterway, Tacoma, WA in the **Federal Register** (76 FR 14829). We received 0 comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Hylebos Bridge restoration involves removal of deteriorated concrete from the Hylebos Bridge and refinishing the bridge's surface. The project poses a safety risk to any vessel traffic in the vicinity below the bridge due to potential falling debris. The hydro demolition machine that will be used can remove up to 16 inches of concrete in a single pass presenting a major safety hazard to vessels, persons, or property below. This safety zone will be enforced daily from 6 a.m. until 6 p.m. from August 20, 2011 through August 22, 2011, unless canceled sooner by the Captain of the Port.

Discussion of Comments and Changes

The notice of proposed rulemaking for this rule did not receive any comments.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard bases this finding on the fact that the safety zone is small in size, short in duration, and maritime traffic will be able to transit this area during times when the zone is not enforced. Maritime traffic may also request permission to transit through the zone from the Captain of the Port, Puget Sound or Designated Representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Hylebos Waterway from 6 a.m. until 6 p.m. from August 20, 2011 through August 22, 2011. This safety zone will not have a significant economic impact on a substantial number of small entities, because the safety zone is short in duration, is minimal in size, and maritime traffic will be allowed to transit through the safety zone with the permission of the Captain of the Port, Puget Sound or Designated Representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule

involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–177 to read as follows:

§ 165.T13–177 Safety Zone; 2011 Hylebos Bridge Restoration, Hylebos Waterway, Tacoma, Washington.

(a) *Location.* The following area is a safety zone: All waters extending 50 yards to the north and south, along the entire length of the Hylebos Bridge in Tacoma, WA.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person or vessel may enter or remain in the safety zone without permission of the Captain of the Port or Designated Representative. See 33 CFR Part 165, Subpart C, for additional requirements. Vessel operators wishing to enter the zone during the enforcement period must request permission for entry by contacting Vessel Traffic Service Puget Sound on VHF channel 14, or the Sector Puget Sound Joint Harbor Operations Center at (206) 217–6001.

(c) *Authorization.* All vessel operators who desire to transit through or remain in the safety zone must obtain permission from the Captain of the Port or Designated Representative. The Captain of the Port may be assisted by federal, state, or local agencies as needed.

(d) *Enforcement Period.* This rule is enforced daily from 6 a.m. until 6 p.m. from August 20, 2011 through August 22, 2011 unless canceled sooner by the Captain of the Port.

Dated: June 3, 2011.

S.J. Ferguson,

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

[FR Doc. 2011–16245 Filed 6–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0528]

RIN 1625–AA00

Safety Zone; Big Sioux River From the Military Road Bridge North Sioux City to the Confluence of the Missouri River, SD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone restricting navigation on the Big Sioux River from the Military Road Bridge in North Sioux City, South Dakota to the confluence of the Missouri River and extending the entire width of the river. During enforcement periods, vessels must obtain Captain of the Port authorization to enter the safety zone. This temporary safety zone is needed to protect the general public, vessels and tows, and the levee system from destruction, loss or injury due to hazards associated with rising flood water. Operation in this zone is restricted unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

DATES: *Effective Date:* this rule is effective in the CFR from June 29, 2011 until 11:59 p.m. CDT August 30, 2011, unless terminated earlier. This rule is effective with actual notice for purposes of enforcement beginning 12:01 am CDT June 7, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0528 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0528 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Documents will also be available for inspection or copying at Coast Guard Sector Upper Mississippi River, 1222 Spruce Street Suite 7.103, St. Louis, MO 63103 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Commander (LCDR) Scott Stoermer, Sector Upper Mississippi River, Coast Guard at (314) 269–2540 or *Scott.A.Stoermer@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be contrary to public interest to publish an NPRM as immediate action is necessary to protect the public and property from the dangers associated with flooding emergencies.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels and mariners from the safety hazards associated with flooding emergencies.

Basis and Purpose

On June 7, 2011, the Captain of the Port Upper Mississippi River deemed navigation on the Big Sioux River unsafe due to severe flooding and has restricted navigation on the Big Sioux River, from the Military Road Bridge in North Sioux City, SD at 42.52 degrees North, 096.48 West longitude to the confluence of the Missouri River at 42.49 degrees North, 096.45 degrees West longitude and extending the entire width of the river. Entry into this zone is prohibited during enforcement periods unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative. Emergency response boats or vessels may enter these waters

when responding to emergent situations on or near the river.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for the Big Sioux River from the Military Road Bridge in North Sioux City, SD at 42.52 degrees North, 096.48 West longitude to the confluence of the Missouri River at 42.49 degrees North, 096.45 degrees West longitude and extending the entire width of the river. During enforcement periods, vessels and tows may not enter this zone unless authorized by the Captain of the Port Sector Upper Mississippi River. Emergency response boats or vessels may enter these waters when responding to emergent situations on or near the river. This rule is effective from 12:01 am CDT June 7, 2011 until 11:59 pm CDT August 30, 2011, unless terminated earlier. This safety zone will be enforced when high water conditions pose a danger to navigation, the levee system, and the general public. The Captain of the Port Sector Upper Mississippi River will inform the public through broadcast notices to mariners and/or marine safety information bulletins when enforcement periods are in place and of all safety zone changes. When enforcement is implemented, vessels currently in the safety zone will be provided opportunity to safely exit the restricted area.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Notifications to the marine community will be made through broadcast notices to mariners and/or marine safety information bulletins. Vessels requiring entry into or passage through the Safety Zone may request permission from the Captain of the Port Sector Upper Mississippi, or a designated representative and entry will be evaluated on a case-by-case basis to minimize impact and protect the general public, levee system, and vessels from destruction, loss or injury due to the hazards associated with rising flood water. The impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit waters of the Big Sioux River from the Military Road Bridge in North Sioux City, SD at 42.52 degrees North, 096.48 West longitude to the confluence of the Missouri River at 42.49 degrees North, 096.45 degrees West longitude and extending the entire width of the river on and after 12:01 am CDT June 7, 2011. This Safety Zone is not expected to have a significant economic impact on a substantial number of small entities because vessels may request permission to transit the area from the Captain of the Port Sector Upper Mississippi, or a designated representative, for passage through the Safety Zone. Passage through the safety zone will be evaluated on a case-by-case basis to minimize impact and protect the general public, levee system, and vessels from destruction, loss or injury due to the hazards associated with rising flood water. If you are a small business entity and are significantly affected by this regulation, please contact LCDR Scott Stoermer, Sector Upper Mississippi River, Coast Guard at (314) 269–2540.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

This rule involves an emergency situation and will be in effect for over one week. An environmental analysis checklist and a categorical exclusion determination will be provided and made available at the docket as indicated in the **ADDRESSES** section.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T11–0511 is added to read as follows:

§ 165.T11–0511 Safety Zone; Big Sioux River from the Military Road Bridge North Sioux City to the confluence of the Missouri River, SD

(a) *Location.* The following area is a safety zone: All waters of the Big Sioux River from the Military Road Bridge, North Sioux City, SD at 42.52 degrees North, 096.48 West longitude to the confluence of the Missouri River at 42.49 degrees North, 096.45 degrees West longitude and extending the entire width of the river.

(b) *Effective date.* June 7, 2011 through August 30, 2011, unless terminated earlier.

(c) *Periods of Enforcement.* This rule will be enforced during dangerous flooding conditions occurring between 12:01 a.m. CDT June 7, 2011 and 11:59 p.m. CDT August 30, 2011. The Captain of the Port Sector Upper Mississippi River will inform the public through broadcast notice to mariners and/or marine safety information bulletins when enforcement is implemented and of any changes to the safety zone. Vessels within the safety zone will be allowed to safely exit the area upon enforcement of this safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart C, operation in this zone is restricted unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

(2) Vessels requiring entry into or passage through the Safety Zone must request permission from the Captain of the Port Sector Upper Mississippi River, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at 314–269–2332.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Sector Upper Mississippi River or their designated representative. Designated Captain of the Port representatives includes United States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 6, 2011.

S.L. Hudson,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2011–16247 Filed 6–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0350]

RIN 1625–AA00

Safety Zones; July 4th Weekend Fireworks Displays Within the Captain of the Port St. Petersburg Zone, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones during the Fourth of July weekend fireworks events on the navigable waterways of Anna Maria, Fort Myers Beach, Longboat Key, Madeira Beach, Naples, Palmetto, Sarasota, St. Petersburg, and Palm Harbor, Florida. These safety zones are necessary to protect the public from the hazards associated with launching fireworks over the navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port St. Petersburg or a designated representative.

DATES: This rule is effective from 8:30 p.m. on July 2, 2011 until 10:30 p.m. on July 4, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0350 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0350 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management

Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Marine Science Technician First Class Jo A. Hoover, Sector St. Petersburg Prevention Department, Coast Guard; telephone 813–228–2191, e-mail *Jo.A.Hoover@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information regarding the fireworks displays until April 27, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks display. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Any delay in the effective date of this rule would expose the public to the dangers posed by the pyrotechnics used in the fireworks display.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

Discussion of Rule

Multiple fireworks displays are planned for the Fourth of July weekend celebration throughout the Captain of the Port St. Petersburg Zone. The fireworks will be launched from land, piers, or barges. Whether launched from land, pier, or barge, such fireworks will explode over navigable waters of the United States.

The Coast Guard is establishing ten temporary safety zones for Fourth of July weekend fireworks displays within the navigable waters of the Captain of the Port St. Petersburg Zone. The safety zones are listed below.

1. Longboat Key, Florida. All waters within a 100 yard radius around the barge from which the fireworks will be launched, located just offshore of Mar Vista Restaurant in Longboat Key at position 27°26′13″ N, 82°40′45″ W. This safety zone will be enforced from 8:45 p.m. until 10 p.m. on July 2, 2011.

2. *Anna Maria, Florida.* All waters within a 120 yard radius around the area from which the fireworks will be launched, located on the Gulf of Mexico just offshore of Sand Bar Restaurant in Anna Maria at position 27°31′35″ N, 82°44′17″ W. This safety zone will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2011.

3. *Cape Coral, Florida.* All waters within a 240 yard radius around the land based location from which the fireworks will be launched, located on the Caloosahatchee River to the east side of the Cape Coral Bridge at position 26°33′46″ N, 81°55′59″ W. This safety zone will be enforced from 8:30 p.m. until 9:50 p.m. on July 4, 2011.

4. *Naples, Florida.* All waters within a 200 yard radius around the pier from which the fireworks will be launched, located on the Gulf of Mexico from the Naples Pier at position 27°07′53″ N, 81°48′32″ W. This safety zone will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2011.

5. *Palmetto, Florida.* All waters within a 150 yard radius around the area from which the fireworks will be launched, located on the Manatee River just off the Green Bridge from the Green Bridge Fishing Pier at position 27°30′15″ N, 82°34′19″ W. This safety zone will be enforced from 8:30 p.m. until 10:30 p.m. on July 4, 2011.

6. *Sarasota, Florida.* All waters within a 125 yard radius around the area from which the fireworks will be launched, from a land based location on Sarasota Bay at Marina Jacks at position 27°19′55″ N, 82°32′48″ W. This safety zone will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2011.

7. *St. Petersburg, Florida.* All waters within a 200 yard radius around the area from which the fireworks will be launched, from a land based location on Tampa Bay at Spa Beach at position 27°46′31″ N, 82°37′38″ W. This safety zone will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2011.

8. *Fort Myers Beach, Florida.* All waters within a 240 yard radius around the pier from which the fireworks will be launched, located on the Gulf of Mexico from the Fort Myers Beach Public Pier at position 26°27′6″ N, 81°57′26″ W. This safety zone will be enforced from 8:45 p.m. until 10:15 p.m. on July 4, 2011.

9. *Madeira Beach, Florida.* All waters within a 95 yard radius around the area from which the fireworks will be launched, from a land based location on Boca Ciega Bay in the vicinity of the Madeira Beach Recreation Center at position 27°48′25″ N, 82°47′58″ W. This safety zone will be enforced from 8:45 p.m. until 10 p.m. on July 4, 2011.

10. *Palm Harbor, Florida.* All waters within a 95 yard radius around the barge from which fireworks will be launched, located just offshore of the entrance to the Ozona Neighborhood entrance in Palm Harbor at approximate position 28°03′44″ N, 82°47′07″ W. This zone will be enforced from 8:45 p.m. until 11 p.m. on July 3, 2011.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port St. Petersburg or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the safety zones may contact the Captain of the Port St. Petersburg via telephone at 727–824–7524, or a designated representative via VHF radio on channel 16, to seek authorization. The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The economic impact of this rule is not significant for the following reasons: (1) Each safety zone will be enforced for a maximum of two hours and 15 minutes; (2) vessel traffic in the areas are expected to be minimal during the enforcement period; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within any of the safety zones without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zones if authorized by the Captain of the Port St. Petersburg or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the safety zones described in this regulation during the respective enforcement period. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–0350 to read as follows:

§ 165.T07–0350 Safety Zones; July 4th Weekend Fireworks Displays Within the Captain of the Port St. Petersburg Zone, FL.

(a) *Regulated Areas.* The following navigation areas are safety zones, with the specific enforcement period for each safety zone. All coordinates are North American Datum 1983.

(1) *Longboat Key, FL.* All waters within a 100 yard radius around the barge from which the fireworks will be launched, located at approximate position 27°26′13″ N, 82°40′45″ W. This regulated area will be enforced from 8:45 p.m. until 10 p.m. on July 2, 2011.

(2) *Anna Maria, FL.* All waters within a 120 yard radius around the area from which the fireworks will be launched, located at approximate position 27°31′35″ N, 82°44′17″ W. This regulated area will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2011.

(3) *Cape Coral, FL.* All waters within a 240 yard radius around the land based location from which the fireworks will be launched, located at approximate position 26°33′46″ N, 81°55′59″ W. This regulated area will be enforced from 8:30 p.m. until 9:50 p.m. on July 4, 2011.

(4) *Naples, FL.* All waters within a 200 yard radius around the pier from which the fireworks will be launched, located at approximate position 26°07′53″ N, 81°48′32″ W. This regulated area will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2011.

(5) *Palmetto, FL.* All waters within a 150 yard radius around the area from which the fireworks will be launched, located at approximate position 27°30′15″ N, 82°34′19″ W. This regulated area will be enforced from 8:30 p.m. until 10:30 p.m. on July 4, 2011.

(6) *Sarasota, FL.* All waters within a 125 yard radius around the area from which the fireworks will be launched, located at approximate position 27°19′55″ N, 82°32′48″ W. This regulated area will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2011.

(7) *St. Petersburg, FL.* All waters within a 200 yard radius around the area from which the fireworks will be launched, located at approximate position 27°46′31″ N, 82°37′38″ W. This regulated area will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2011.

(8) *Fort Myers Beach, FL.* All waters within a 240 yard radius around the area from which the fireworks will be launched, located at approximate position 26°27′06″ N, 81°57′26″ W. This regulated area will be enforced from 8:45 p.m. until 10:15 p.m. on July 4, 2011.

(9) *Madeira Beach, FL.* All waters within a 95 yard radius around the area from which the fireworks will be launched, located at approximate position 27°48′25″ N, 82°47′58″ W. This regulated area will be enforced from 8:45 p.m. until 10 p.m. on July 4, 2011.

(10) *Palm Harbor, Florida.* All waters within a 95 yard radius around the barge from which fireworks will be launched, located at approximate position 28°03′44″ N, 82°47′07″ W. This regulated area will be enforced from 8:45 p.m. until 11 p.m. on July 3, 2011.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port St. Petersburg by telephone at 727–824–7524, or a designated representative via VHF radio on channel 16, to seek authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective dates.* This rule is effective from 8:30 p.m. on July 2, 2011 until 10:30 p.m. on July 4, 2011.

Dated: June 8, 2011.

S.L. Dickinson,

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

[FR Doc. 2011–16324 Filed 6–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0230]

RIN 1625–AA00

Safety Zone, Newport River; Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of the Newport River under the main span US 70/Morehead City-Newport River high rise bridge in Carteret County, NC. This safety zone is necessary to provide for safety of life on navigable waters during the establishment of staging for bridge maintenance. This rule will enhance the safety of the contractors performing maintenance as well as the safety of vessels that plan to transit this area.

DATES: This rule is effective from 10 a.m. to 4 p.m. on August 20, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble

as being available in the docket, are part of docket USCG–2011–0230 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0230 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, e-mail *Joseph.M.Edge@uscg.mil* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 26, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Newport River; Morehead City, North Carolina in the **Federal Register** (33 FR 165). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The State of North Carolina Department of Transportation awarded a contract to Astron General Contracting Company of Jacksonville, NC to perform bridge maintenance on the US Highway 70 Fixed bridge crossing Newport River at Morehead City, North Carolina. The contract provides for cleaning, painting, and steel repair to begin on June 1, 2011 and will be completed by July 31, 2011. The contractor requires the main channel in the vicinity of the bridge to remain closed during demobilization on August 20, 2011 from 10 a.m. to 4 p.m. The Coast Guard will temporarily restrict access to this section of Newport River during the mobilization of the bridge maintenance equipment.

Discussion of Comments and Changes

There were no comments; no changes were made.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this regulation will restrict access to the area, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited time, from 10 a.m. to 4 p.m., on August 20, 2011, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to the section of the Newport River in the immediate vicinity of the US Highway 70 Fixed bridge, vessel traffic may use alternate waterways to transit safely around the safety zone. All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of recreational and fishing vessels intending to transit the specified portion of Newport River from 10 a.m. to 4 p.m. on August 20, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect for six hours from 10 a.m. to 4 p.m. Although the safety zone will apply to the section of the Newport River in the vicinity of the bridge, vessel traffic may use alternate waterways to transit safely around the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–0184 to read as follows:

§ 165.T05–0230 SAFETY ZONE; Newport River, Morehead City, NC.

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. Representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: This zone includes the waters of Newport River directly under latitude 34°43′15″ North, longitude 076°41′39″ West, and 100 yards on either side of the U.S. Highway 70 Fixed bridge at Morehead City, North Carolina.

(c) *Regulations.* (1) The general regulations contained in Sec. 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (910) 343–3882 or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 10 a.m. to 4 p.m. on August 20, 2011 unless cancelled earlier by the Captain of the Port.

Dated: June 13, 2011.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2011–16350 Filed 6–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0516]

RIN 1625–AA00

Safety Zone; Bay Point Fireworks, Bay Point Marina; Marblehead, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Captain of the Port Detroit Zone on Lake Erie, Marblehead, Ohio. This Zone is intended to restrict vessels from portions of Lake Erie for the Bay Point Fireworks. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This regulation is effective from 10 p.m. on July 2, 2011 through 10:20 p.m. July 3, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0516 and are available online by going to *http://www.regulations.gov,* inserting

USCG–2011–0516 in the ''Keyword'' box, and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BM1 Tracy Girard, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6036, e-mail *tracy.m.girard@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a comment period to run would be impracticable and contrary to the public interest because it would prevent the Captain of the Port Detroit from protecting the public from the hazards associated with maritime fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, a 30-day notice period would be impracticable and contrary to the public interest.

Background and Purpose

The Bay Point fireworks displays will occur between 10 p.m. and 10:20 p.m. on July 2, 2011. In the case of inclement weather on July 2, 2011, the fireworks display will occur between 10 p.m. until 10:20 p.m. on July 3, 2011, weather permitting. The Captain of the Port Detroit has determined that the Bay Point fireworks display will present hazards to spectators within the vicinity of the launch site. Such hazards include obstructions to the waterway, the explosive danger of fireworks, and debris falling into the water.

Discussion of Rule

Because of the aforesaid hazards, the Captain of the Port, Sector Detroit has determined that a temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Bay Point Fireworks display. Accordingly, the safety zone will encompass all U.S. navigable waters of Lake Erie within a 140-yard radius of the fireworks launch site, located at position 41°30′29.23″ N, 082°43′8.45″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Detroit or the designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated representative. The Captain of the Port, Sector Detroit or his designated representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Lake Erie, Bay Point Marina; Marblehead, OH between 10 p.m. and 10:20 p.m. on July 2, 2011 or, in the case of inclement weather on July 2, 2011, from 10 p.m. until 10:20 p.m. on July 3, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect for twenty minutes total and commercial vessels can request permission to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0516 to read as follows:

§ 165.T09–0516 Safety Zone; Bay Point Fireworks, Bay Point Marina; Marblehead, OH.

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of Lake Erie, Bay Point Marina, Marblehead, OH within a 140-yard radius of the fireworks launch site located at position 41°30′29.23″ N, 082°43′8.45″ W.

(b) *Effective and enforcement period.* This regulation is effective from 10 p.m. on July 2, 2011 through 10:20 p.m. July 3, 2011. The safety zone will be enforced from 10 p.m. until to 10:20 p.m. on July 2, 2011. In the case of inclement weather on July 2, 2011, this regulation may also be enforced from 10 p.m. until 10:20 p.m. on July 3, 2011, weather permitting.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Detroit or his designated representative.

(3) The ''designated representative'' of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Detroit to act on his behalf. The designated representative of the Captain of the Port, Sector Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Detroit or his designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Detroit or his designated representative.

Dated: June 16, 2011.

J.E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port, Sector Detroit.

[FR Doc. 2011–16246 Filed 6–28–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0316–201139; FRL–9426–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Birmingham, Alabama, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as ''the Birmingham Area'' or ''Area'') has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). The Birmingham Area is comprised of Jefferson and Shelby Counties in their entireties, and a portion of Walker County in Alabama. This determination of attainment is based upon quality-assured and certified ambient air monitoring data for the 2008–2010 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. The requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This final rule is effective on July 29, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2011–0316. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

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

SUPPLEMENTARY INFORMATION:

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

I. What action is EPA taking?

EPA is determining that the Birmingham Area (comprised of Jefferson and Shelby Counties in their entireties, and a portion of Walker County in Alabama) has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled and certified ambient air monitoring data that shows the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS based on the 2008–2010 data.

Other specific requirements of the determination and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on April 12, 2011 (76 FR 20291). For summary purposes, the Pelham High School monitor did not meet data completeness for the 3rd quarter of 2010. The 3-year 2008–2010 design value with data substitution is 11.8 $\mu g/m^3$; therefore, the monitor passes the data substitution test. The official design value for the monitor is 10.9 $\mu g/m^3$. The Area's highest 3-year average annual concentration for 2008–2010 is 13.7 $\mu g/m^3$ at the North Birmingham monitor. The comment period closed on May 12, 2011. No comments were received in response to the NPR.

II. What is the effect of this action?

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

III. What is EPA's final action?

EPA is determining that the Birmingham Area has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that this Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS during the period 2008–2010. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as the Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. EPA is taking this final action because it is in accordance with the CAA and EPA policy and guidance.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

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

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

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

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

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

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this 1997 $PM_{2.5}$ clean NAAQS data determination for the Birmingham Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 29, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: June 14, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

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

§ 52.62 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(c) *Determination of attaining data.* EPA has determined, as of June 29, 2011, the Birmingham, Alabama, nonattainment area has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

[FR Doc. 2011–16378 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 60 (§ 60.1 to end of part 60 sections), revised as of July 1, 2010, on page 60, in § 60.4(d)(2)(viii), the table entitled ''Delegation Status for New Source Performance Standards for Shasta County Air Quality Management District, Siskiyou County Air Pollution Control District, South Coast Air Quality Management District, and Tehama County Air Pollution Control District'' is corrected to read as follows:

§ 60.4 Address.

* * * * *

(d) * * *

(2) * * *

(viii) * * *

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air Pollution Control Agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
A	General Provisions	X	X	X	
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X		X	
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.			X	
Db	Industrial-Commercial-Institutional Steam Generating Units			X	
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators	X		X	
Ea	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.			X	
Eb	Municipal Waste Combustors Constructed After September 20, 1994			X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air Pollution Control Agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.			X	
F	Portland Cement Plants	X		X	
G	Nitric Acid Plants	X		X	
H	Sulfuric Acid Plants	X		X	
I	Hot Mix Asphalt Facilities	X		X	
J	Petroleum Refineries	X		X	
Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.				
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X		X	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.			X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.			X	
L	Secondary Lead Smelters	X		X	
M	Secondary Brass and Bronze Production Plants	X		X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X		X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.			X	
O	Sewage Treatment Plants	X		X	
P	Primary Copper Smelters	X		X	
Q	Primary Zinc Smelters	X		X	
R	Primary Lead Smelters	X		X	
S	Primary Aluminum Reduction Plants	X		X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X		X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X		X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X		X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X		X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X		X	
Y	Coal Preparation Plants	X		X	
Z	Ferroalloy Production Facilities	X		X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X		X	
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.			X	
BB	Kraft pulp Mills	X		X	
CC	Glass Manufacturing Plants			X	
DD	Grain Elevators	X		X	
EE	Surface Coating of Metal Furniture			X	
FF	(Reserved)				
GG	Stationary Gas Turbines			X	
HH	Lime Manufacturing Plants	X		X	
KK	Lead-Acid Battery Manufacturing Plants			X	
LL	Metallic Mineral Processing Plants			X	
MM	Automobile and Light Duty Trucks Surface Coating Operations			X	
NN	Phosphate Rock Plants			X	
PP	Ammonium Sulfate Manufacture			X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing			X	
RR	Pressure Sensitive Tape and Label Surface Coating Operations			X	
SS	Industrial Surface Coating: Large Appliances			X	
TT	Metal Coil Surface Coating			X	
UU	Asphalt Processing and Asphalt Roofing Manufacture			X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.			X	
VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.				
WW	Beverage Can Surface Coating Industry			X	
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters		X	X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air Pollution Control Agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
BBB ...	Rubber Tire Manufacturing Industry	.....	X	X	.....
CCC ..	(Reserved)	.....	.....	.....	.....
DDD ..	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	.....	.....	X	.....
EEE ...	(Reserved)	.....	.....	.....	.....
FFF ...	Flexible Vinyl and Urethane Coating and Printing	.....	.....	X	.....
GGG	Equipment Leaks of VOC in Petroleum Refineries	.....	.....	X	.....
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.	.....	.....	.....	.....
HHH ..	Synthetic Fiber Production Facilities	.....	.....	X	.....
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	.....	.....	X	.....
JJJ	Petroleum Dry Cleaners	.....	.....	X	.....
KKK ...	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	.....	.....	X	.....
LLL	Onshore Natural Gas Processing: SO2 Emissions	.....	.....	X	.....
MMM	(Reserved)	.....	.....	.....	.....
NNN ..	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	.....	.....	X	.....
OOO	Nonmetallic Mineral Processing Plants	.....	.....	X	.....
PPP ...	Wool Fiberglass Insulation Manufacturing Plants	.....	.....	X	.....
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	.....	X	X	.....
RRR ..	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	.....	.....	X	.....
SSS ...	Magnetic Tape Coating Facilities	.....	X	X	.....
TTT ...	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	.....	X	X	.....
UUU ..	Calciners and Dryers in Mineral Industries	.....	.....	X	.....
VVV ...	Polymeric Coating of Supporting Substrates Facilities	.....	.....	X	.....
WWW	Municipal Solid Waste Landfills	.....	.....	X	.....
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commended After June 6, 2001.	X	X	X	.....
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.	.....	.....	X	.....
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.	.....	.....	X	.....
GGGG	(Reserved)	.....	.....	.....	.....
IIII	Stationary Compression Ignition Internal Combustion Engines	.....	.....	X	.....
JJJJ ...	Stationary Spark Ignition Internal Combustion Engines	.....	.....	.....	.....
KKKK	Stationary Combustion Turbines	.....	.....	X	.....

* * * * *

[FR Doc. 2011–16462 Filed 6–28–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0474; FRL–8876–5]

Diethylene Glycol Mono Butyl Ether; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of diethylene glycol mono butyl ether (CAS Reg. No. 112–34–5) when used as a pesticide inert ingredient as a solvent, stabilizer and/or antifreeze within pesticide formulations/products without limitation under 40 CFR 180.920. Huntsman, Dow AgroSciences L.L.C., Nufarm Americas Inc., BASF, Stepan Company, Loveland Products Inc., and Rhodia Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of diethylene glycol mono butyl ether.

DATES: This regulation is effective June 29, 2011. Objections and requests for hearings must be received on or before August 29, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0474. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available,

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

FOR FURTHER INFORMATION CONTACT: Lisa Austin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–7894; *e-mail address: Austin.Lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0474 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 29, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2008–0474, by one of the following methods:

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

II. Petition for Exemption

In the **Federal Register** of July 9, 2008 (73 FR 39291) (FRL–8371–2), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 8E7355) by Huntsman, 10003 Woodloch Forest Drive, The Woodlands, TX 77380; Dow AgroSciences L.L.C., 9330 Zionsville Road, Indianapolis, Indiana 46268; Nufarm Americas Inc., 150 Harvester Drive Suite 220, Burr Ridge, Illinois 60527; BASF, 26 Davis Drive, Research Triangle Park, NC 27709; Stepan Company, 22 W. Frontage Road, Northfield, IL 60093; Loveland Products Inc., PO Box 1286, Greeley, CO 80632; and Rhodia Inc., CN 1500, Cranbury, New Jersey 08512. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of diethylene glycol mono butyl ether (CAS Reg. No. 112–34–5) when used as an inert ingredient solvent, stabilizer and/or antifreeze without limitation in pesticide formulations applied to pre-harvest crops. That notice referenced a summary of the petition prepared by Huntsman, Dow AgroSciences L.L.C., Nufarm Americas Inc., BASF, Stepan Company, Loveland Products Inc., and Rhodia Inc., which is available in the docket, *http://www.regulations.gov.* The Agency received one comment in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is

reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(c)(2)(A) of FFDCA, and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for diethylene glycol mono butyl ether including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with diethylene glycol mono butyl ether follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by diethylene glycol mono butyl ether as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Diethylene glycol mono butyl ether (DEGBE) has low acute toxicity via the oral and dermal routes. It is a slightly irritating to the skin and moderately irritating to the eyes. It is a skin not a sensitizer.

Oral subchronic studies with DEGBE were available in the rat. In a study in F344 rats, toxicity was mainly manifested as an increase in creatinine levels at >51 mg/kg/day. Confidence in this study is low because of the high unexplained mortality. Also, in other studies in rats, toxicity was observed at doses >210 mg/kg/day. These effects included increased absolute relative liver weight; and hepatic cytochrome P450's and UGT levels; decreased total protein, cholesterol, and aspartate aminotransferase, very slight hepatocyte hypertrophy and increased individual hepatocyte degeneration in females only, decreased RBC count; hemoglobin (Hgb); and hematocrit (Hct) and increased absolute and relative kidney weights with an equivocal increase in minor histopathologic changes typical of early spontaneous nephropathy. In a well conducted 90-day toxicity study in rats via drinking water, rats were exposed to DEGBE at 0, 50, 250, or 1000 mg/kg/day. The NOAEL in this study was 250 mg/kg/day based on kidney, liver and blood effects seen at the LOAEL of 1000 mg/kg/day. In this study, no adverse treatment-related effects were observed on functional observational battery (FOB) parameters. Liver toxicity (including liver enzymes), kidney toxicity and blood parameters were affected at the limit dose of 1000 mg/kg/day.

There was one developmental toxicity study in Wistar rats conducted via the oral route of exposure. In this study, there were no maternal or developmental effects at doses up to 633 mg/kg/day. In a developmental toxicity study in mice via gavage, DEGBE did not produce any malformations at doses up to 2050 mg/kg/day. The maternal and developmental NOAEL in mice was 500 mg/kg/day. A developmental study in rabbits via the dermal route of exposure was available for review. In this study, maternal and developmental toxicity was not observed at doses up to 1000 mg/kg/day.

There were 2 oral reproduction toxicity studies in rats available for review. In both studies rats were exposed to DEGBE via gavage at doses of 0, 250, 500 or 1000 mg/kg/day. In one study fetal susceptibility was not observed. Maternal (mortality) and offspring (reduced mean pup weight) toxicity occurred at the same dose (1000 mg/kg/day). The maternal and developmental NOAELs in this study were 500 mg/kg/day. In a second study quantitative fetal susceptibility was observed. Parental toxicity was not observed at doses up to 1,000 mg/kg/day. Offspring toxicity (decreased bodyweight) was observed at 1000 mg/kg/day. The offspring NOAEL was 500 mg/kg/day. Reproductive toxicity was not observed in either study. A reproductive toxicity study in rats with exposure via the dermal route was also available for review. Parental, offspring and reproduction toxicity was not observed at doses up to 2000 mg/kg/day.

Dermal toxicity studies with DEGBE were available in the rat and rabbit. In a 13-week dermal toxicity study in the Sprague-Dawley (SD) rat, systemic toxicity was not observed at doses up to 2,000 mg/kg/day. In a separate 13-week dermal toxicity study in SD rats, the NOAEL was 580 mg/kg/day based on renal tubular epithelium degeneration seen at the LOAEL of 1900 mg/kg/day. In a neurotoxicity study via the dermal route of exposure, degeneration of the renal tubular epithelium was observed at 2000 mg/kg/day. The NOAEL was 600 mg/kg/day. No effects on FOB parameters, motor activity or neuropathology were observed at doses up to 2000 mg/kg/day following dermal treatment. No local or systemic effects were observed in the New Zealand white rabbit.

Several inhalation toxicity studies with DEGBE were available for review in rats. Perivascular and peribronchial infiltrate were observed in Wistar male and female rats and decreased spleen weights in males at doses > 100 mg/m3. In addition, liver toxicity, kidney toxicity and blood effects were identified as the target organs in inhalation studies.

Immunotoxicity studies for DEGBE were not available for review. However, DEGBE belongs to the glycol ethers class of chemicals. Immunotoxicity studies were available for ethylene glycol mono butyl ether, also a glycol ether differing in only one ethyl group from DEGBE. These data were used to assess the immunotoxic potential of DEGBE. Signs of potential immunotoxicity were not observed in any of the available studies with the surrogate chemical. Nor was there evidence of immunotoxicity potential in any of the studies submitted for DEGBE. Therefore, DEGBE is not expected to be immunotoxic.

Mutagenicity studies (Ames test, mammalian gene mutation, mouse lymphoma, chromosome aberration and unscheduled DNA synthesis) with DEGBE were available for review. All

the tests were negative with the exception of the mouse lymphoma assay in which cells were weakly positive in the absence of S–9, while it was negative in the presence of S–9.

Chronic and carcinogenicity studies were not available on DEGBE. However, DEGBE belongs to the glycol ether class of chemicals which include structurally similar chemicals ethylene glycol and diethylene glycol. Therefore, carcinogenicity data available on these chemicals were used to assess DEGBE's potential to cause cancer. Based on the lack of evidence of carcinogenicity potential for ethylene glycol and diethylene glycol and the lack of mutagenic concerns for DEGBE, it is not expected to be carcinogenic to humans.

Metabolism studies demonstrated that DEGBE was absorbed rapidly, metabolized and primarily eliminated via the urine. The major metabolite was identified as 2-(2-butoxyethoxy) acetic acid.

Specific information on the studies received and the nature of the adverse effects caused by the diethylene glycol mono butyl ether, as well as, the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document 042203, Diethylene glycol mono butyl ether; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations at pp. 6–21 and pp. 19–22 in EPA–HQ–OPP–2008–0474.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for diethylene glycol mono butyl ether used for human risk assessment is shown in Table 1 of this unit.

No acute endpoint of concern for general population was identified in the available data base.

The 90 day oral toxicity study in rats via drinking water was selected to establish the chronic reference dose (cRfD). The NOAEL in this study was 250 mg/kg/day and the LOAEL was 1000 mg/kg/day based on kidney, liver, and blood effects. Although 51 mg/kg/day was the lowest LOAEL in the database, confidence in this study was low due to the observed unexplained mortality. A lower NOAEL (94 mg/kg/day) was also observed in a 30 day oral toxicity study in the rat. The LOAEL (210 mg/kg/day) was based on decreased water consumption, growth retardation, and abnormalities in various organs. However, there is more confidence in the 90 day oral toxicity study in rats because it is a more recent study, was well conducted, tested more animals, provided more detailed information, provided data on all parameters measured in the 30-day study, has a well established NOAEL (250 mg/kg/day) and none of the aforementioned effects were observed. Therefore, the point of departure of 250 mg/kg/day was selected to establish the cRfD.

The point of departure selected for the dermal exposure scenario is from the 13 week neurotoxicity screening battery in rats. The NOAEL in this study was 600 mg/kg/day and the LOAEL was 2,000 mg/kg/day based on mild degeneration of renal tubular epithelium in males. This endpoint and dose for dermal exposure assessment was further supported by a 90-day dermal toxicity study in rats with a NOAEL of 580 mg/kg/day based renal tubular degeneration seen at the LOAEL of 1900 mg/kg/day. For the inhalation scenarios, 94 mg/m3 (~27 mg/kg/day) from an inhalation toxicity study in Wistar rats was selected for the point of departure. Although, 39 mg/m3 (~11 mg/kg/day) from an inhalation toxicity study in F344 rats represents the lowest NOAEL in the database for this scenario it was not selected because the observed liver changes were minor and occurred at the high dose (117 mg/m3). In addition, the selected study was more recent and one would expect changes to occur in the liver since animals in this study were treated for a longer duration. However, liver toxicity was not observed in the selected study. Therefore, 94 mg/m3 (~27 mg/kg/day) was selected for the point of departure for all inhalation scenarios.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR DIETHYLENE GLYCOL MONO BUTYL ETHER FOR USE IN HUMAN RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age)	An acute endpoint was not identified in the database.		
Chronic dietary (All populations)	NOAEL= 250 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 2.5 mg/kg/day cPAD = 2.5 mg/kg/day	90 Day Oral Toxicity Study LOAEL = 1000 mg/kg/day based on kidney, liver, and blood effects.
Incidental oral short-term (1 to 30 days)	NOAEL= 250 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 00	90 Day Oral Toxicity Study LOAEL = 1000 mg/kg/day based on kidney, liver, and blood effects.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR DIETHYLENE GLYCOL MONO BUTYL ETHER FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Incidental oral intermediate-term (1 to 6 months).	NOAEL= 250 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90 Day Oral Toxicity Study LOAEL = 1000 mg/kg/day based on kidney, liver, and blood effects.
Dermal short-term (1 to 30 days)	NOAEL = 600 mg/kg/day (UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	13 week Neurotoxicity Screening Battery LOAEL = 2000 mg/kg/day based on [mild degeneration of renal tubular epithelium in males.
Dermal intermediate-term (1 to 6 months)	NOAEL = 600 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	13 week Neurotoxicity Screening Battery LOAEL = 2000 mg/kg/day based on mild degeneration of renal tubular epithelium in males.
Inhalation short-term (1 to 30 days)	NOAEL= 27 mg/kg/day (inhalation absorption rate = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	5 week Subchronic Inhalation Toxicity Study LOAEL was not established.
Inhalation (1 to 6 months)	NOAEL= 27 mg/kg/day (inhalation absorption rate = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	5 week Subchronic Inhalation Toxicity Study LOAEL was not established.
Cancer (Oral, dermal, inhalation)	Not likely to be carcinogenic based on lack of evidence of carcinogenicity in structurally similar chemicals, ethylene glycol and diethylene glycol and the lack of mutagenicity.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to diethylene glycol mono butyl ether, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from diethylene glycol mono butyl ether in food as follows:

No acute endpoint of concern was identified in the database. Therefore, acute dietary risk assessment was not conducted.

i. Chronic exposure. In conducting the chronic dietary exposure assessments, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for the diethylene glycol mono butyl ether. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts.'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures led to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentration of active ingredient in agricultural products is generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient.

In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

ii. Cancer. For the reasons discussed above, the Agency has not identified any concerns for carcinogenicity relating to diethylene glycol mono butyl ether. Accordingly, a dietary exposure assessment to evaluate cancer risk was not performed.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for diethylene glycol mono butyl ether, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

DEGBE may be used in inert ingredients in products that are registered for specific uses that may result in residential exposure. A screening level residential exposure and risk assessment was completed for products containing DEGBE as inert ingredients. The DEGBE inerts may be present in consumer personal (care) products and cosmetics (at concentrations up to 30%) (*http://hpd.nlm.nih.gov/index.htm*). The Agency conducted exposure assessments based on end-use product application methods and labeled application rates. The Agency conducted an assessment to represent worst-case residential exposure by assessing DEGBE in pesticide formulations used in crack and crevice applications. The Agency conducted an assessment to represent worst-case residential exposure by assessing post application exposures and risks from DEGBE in pesticide formulations.

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

EPA has not found diethylene glycol mono butyl ether to share a common mechanism of toxicity with any other substances, and diethylene glycol mono butyl ether does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that diethylene glycol mono butyl ether does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Fetal susceptibility was not observed in either of the developmental toxicity studies with rats or rabbits. There were no toxic effects observed in parents or offspring in either study at the highest doses tested, 633 and 1000 mg/kg/day, respectively. No developmental effects were observed in mice at doses up to 2050 mg/kg/day. In a reproduction toxicity study in the rat, quantitative fetal susceptibility was observed. Parental toxicity was not observed at doses up to 1,000 mg/kg/day. However, offspring toxicity (decreased bodyweight) occurred at 1000 mg/kg/day. There was a well established NOAEL in this study protecting fetuses. Therefore, the concern for increased fetal susceptibility is low and there are no residual concerns.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for diethylene glycol mono butyl ether is adequate. The following acceptable studies are available:

Developmental toxicity in rodents (3 oral)
Developmental toxicity in rabbits (1 dermal)
Reproduction toxicity study in rats (2 oral, 1 dermal)

ii. Signs of neurotoxicity were not observed in the neurotoxicity screening battery administered via the dermal route. Nor were signs of neurotoxicity observed in a 90 day oral toxicity (drinking water) in rats. In addition, signs of neurotoxicity were not observed in any of the other submitted studies. Therefore, EPA concluded that the developmental neurotoxicity study is not required.

iii. Immunotoxicity studies for DEGBE were not available for review. However, DEGBE belongs to the glycol ethers class of chemicals. Immunotoxicity studies were available for ethylene glycol monobutyl ether, also a glycol ether differing only in one ethyl group. This data was used to assess the immunotoxic potential of DEGBE. Signs of potential immunotoxicity were not observed in any of the available studies with DEGBE and the surrogate chemical. Therefore, DEGBE is not expected to be immunotoxic.

iv. Evidence of increased susceptibility was observed in a reproduction toxicity study in the rat. However, the concern for this increased susceptibility was low because there was a well established NOAEL of 500 mg/kg/d in this study. Also, the established cRfD (250 mg/kg/day) is protective of the fetal effects.

v. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed using very conservative assumptions. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to DEGBE in drinking

water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by DEGBE.

E. Aggregate Risks and Determination of Safety

Determination of safety section. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* No adverse effects attributable to a single exposure of DEGBE were seen in the toxicity databases. Therefore, DEGBE is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to DEGBE from food and water will utilize 0.08% for the U.S. population and 0.25% of the cPAD for children 1–2 yrs old, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

DEGBE is currently used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to DEGBE.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 102 for both adult males and females respectively. Adult residential exposure combines high end dermal and inhalation handler exposure from liquids/trigger sprayer/home garden use with a high end post application dermal exposure from contact with treated lawns. As the level of concern is for MOEs that are lower than 100, this MOE is not of concern. EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 163 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). Because EPA's level of concern for DEGBE is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

DEGBE is currently used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to DEGBE.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 550 for adult males and females. Adult residential exposure combines high end dermal and inhalation handler exposure from liquids/trigger sprayer/home garden use with a high end post application dermal exposure from contact with treated lawns. EPA has concluded the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 230 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). Because EPA's level of concern for DEGBE is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to DEGBE.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to DEGBE residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established an MRL for diethylene glycol mono butyl ether.

C. Response to Comments

The comment was received from a private citizen who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180. 920 for diethylene glycol mono butyl ether when used as an inert ingredient (pesticide inert ingredient as a solvent, stabilizer and/or antifreeze within pesticide formulations/products without limitation) in pesticide formulations applied to pre-harvest crops.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule

has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 20, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180. 920, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

Inert ingredients	Limits	Uses
* * * * * * *		
Diethylene glycol mono butyl ether (CAS Reg. No. 112–34–5).	Without limitation	Pesticide inert ingredient as a solvent, stabilizer and/or antifreeze
* * * * * * *		

[FR Doc. 2011–16188 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0980; FRL–8877–2]

Cloquintocet-mexyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the established tolerance expression for residues of cloquintocet-mexyl and its acid metabolite on wheat forage, wheat grain, wheat hay, and wheat straw to cover residues in or on these commodities when cloquintocet-mexyl is used as an inert ingredient (safener) in pesticide formulations containing the active ingredient, dicamba. BASF Corporation requested this tolerance amendment under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 29, 2011. Objections and requests for hearings must be received on or before August 29, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0980. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA.

The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bethany Benbow, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–8072; *e-mail address: benbow.bethany@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0980 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 29, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0980, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 29, 2011 (76 FR 17374) (FRL–8867–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E7781) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.560 be amended by expanding the tolerances therein to cover residues of the inert ingredient (herbicide safener), cloquintocet-mexyl (acetic acid [(5-chloro-8-quinolinyl) oxy]-, 1-methylhexyl ester; CAS Reg. No. 99607–70–2), and its acid metabolite (5-chloro-8-quinolinoxyacetic acid) on wheat forage, wheat grain, wheat hay, and wheat straw when used in formulation with the active ingredient, dicamba. No numerical change to the tolerances for the specific wheat commodities was sought. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for cloquintocet-mexyl including exposure resulting from the amended tolerances established by this action. EPA's assessment of exposures and risks associated with cloquintocet-mexyl follows.

In the **Federal Register** of March 31, 2010 (75 FR 16017) (FRL–8816–3), EPA issued a final rule that amended 40 CFR 180.560 by adding a reference to the active ingredient, flucarbazone-sodium (wheat only). When the Agency conducted the risk assessments supporting this tolerance action, it assumed that 100% of wheat crops were treated with cloquintocet-mexyl and that residues were present on all wheat commodities at the tolerance levels. With these assumptions, exposure to cloquintocet-mexyl did not exceed 1% of the acute Population adjusted dose or chronic Population adjusted dose for the

most exposed population groups. Since this current action to amend the tolerance expression of cloquintocet-mexyl does not involve a change in the tolerance levels for wheat commodities, the toxicity database has not changed, and exposure has already been assessed based on the conservative assumption that all wheat is treated with cloquintocet-mexyl and contains tolerance-level residues, EPA concludes that the last risk assessment, described in its entirety in the March 31, 2010 final rule, is still applicable.

Therefore, based on the risk assessment discussed in the final rule published in the **Federal Register** of March 31, 2010, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cloquintocet-mexyl and its acid metabolite (5-chloro-8-quinolinoxyacetic acid).

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The two enforcement methods are the High Performance Liquid Chromatography with Ultraviolet Detection (HPLC/UV) method REM 138.01 for determination of cloquintocet-mexyl (parent) and the HPLC/UV Method REM 138.10 for determination of its acid metabolite. These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

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

V. Conclusion

Therefore, the previously established tolerance expression for residues of cloquintocet-mexyl and its acid metabolite on wheat forage, wheat grain, wheat hay, and wheat straw is amended as set forth in the regulatory text.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 21, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.560 is amended by revising the introductory text in paragraph (a) to read as follows:

§ 180.560 Cloquintocet-mexyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of cloquintocet-mexyl, (acetic acid [(5-chloro-8-quinolinyl)oxy]-,1-methylhexyl ester; CAS Reg. No. 99607–70–2) and its

acid metabolite (5-chloro-8-quinolinoxyacetic acid), when used as an inert ingredient (safener) in pesticide formulations containing the active ingredients clodinafop-propargyl (wheat only), dicamba (wheat only), flucarbazone-sodium (wheat only), pinoxaden (wheat or barley), or pyroxsulum (wheat only) in or on the following food commodities:

* * * * *

[FR Doc. 2011–16186 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0253; FRL–8877–7]

Propylene Oxide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the propylene oxide tolerance on ''nut, tree, group 14'' to ''nutmeat, processed, except peanuts'' to correct an error in a prior rulemaking.

DATES: This regulation is effective June 29, 2011. Objections and requests for hearings must be received on or before August 29, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0253. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–0034; *e-mail address: garvie.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0253 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 29, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b). In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2005–0253, by one of the following methods:

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

II. Summary of Tolerance Amendment

In the **Federal Register** of March 30, 2011 (76 FR 17611) (FRL–8866–6), EPA issued a proposed rule pursuant to section 408(e) of FFDCA, 21 U.S.C. 346a(e), announcing the Agency's proposal to amend the propylene oxide tolerance (40 CFR 180.491) on ''nut, tree, group 14'' to read ''nutmeat, processed, except peanuts.'' One comment was received on the proposal. The commenter supported EPA's proposed tolerance amendment and EPA's explanation as to why the tolerance should be amended.

III. Conclusion

Therefore, for the reasons stated in the proposed rule, EPA is amending the propylene oxide tolerance (40 CFR 180.491) on ''nut, tree, group 14'' to read ''nutmeat, processed, except peanuts.''

IV. Statutory and Executive Order Reviews

This final rule amends a tolerance pursuant to section 408(e) of FFDCA. The Office of Management and Budget (OMB) has exempted these types of

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

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

Pursuant to the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have significant negative economic impact on a substantial number of small entities. In fact, this rule will have no impact because it merely corrects an error in the propylene oxide tolerance regulation that was inserted in the regulation without proper authority and thus was without legal effect.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 16, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.491 is amended by revising ''Nut, tree, group 14'' in the table in paragraphs (a)(1) and (a)(2) to read as follows:

§ 180.491 Propylene oxide; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Nutmeat, processed, except peanuts	300
* * * * *	

(2) * * *

Commodity	Parts per million
* * * * *	
Nutmeat, processed, except peanuts	10.0
* * * * *	

* * * * *

[FR Doc. 2011–16045 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0423; FRL–8879–2]

Mevinphos; Data Call-in Order for Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final order.

SUMMARY: This order requires the submission of various data to support the continuation of the tolerances for the pesticide mevinphos. Pesticide tolerances are established under the Federal Food, Drug, and Cosmetic Act (FFDCA). Following publication of this order, persons who are interested in the continuation of the mevinphos tolerances must notify the Agency by completing and submitting the required section 408(f) Order Response form (available in the docket) within 90 days. If the Agency does not receive within 90 days after publication of the final order a section 408(f) Response Form identifying a person who agrees to submit the required data, EPA will revoke the mevinphos tolerances.

DATES: This final order is effective June 29, 2011. A section 408(f) Order Response form must be received on or before September 27, 2011.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0423. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP

Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Submit your section 408(f) Order Response form, identified by docket identification (ID) number EPA–HQ–OPP–2010–0423, by one of the following methods:

- *Federal eRulemaking Portal:.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.
- *Instructions:* Direct your section 408(f) Order Response form to docket ID number EPA–HQ–OPP–2010–0423. EPA's policy is that all information and comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the information or comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send information or comments via an e-mail directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the information or comment that is placed in the docket and made available on the Internet. If you submit information or a comment electronically, EPA recommends that you include your name and other contact information in the body of your information or comment and with any disk or CD–ROM you submit. If EPA cannot read your information or comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your submission. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.
- *Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 603–0065; *fax number:* (703) 308–8090; *e-mail address: bartow.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl http://www.gpoaccess.gov/ecfr.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

II. Background

A. What action is the agency taking?

In this document EPA issues an order requiring the submission of various data to support the continuation of the mevinphos tolerances at 40 CFR 180.157 under section 408 of the Federal Food, Drug, and Cosmetic Act (''FFDCA''), 21 U.S.C. 346a.

Mevinphos is not currently registered under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.,* and may not be sold, distributed, or used in the United States. Mevinphos' FIFRA registration was canceled in 1994. However, 15 FFDCA tolerances remain for residues of mevinphos on the following commodities: Broccoli, cabbage, cauliflower, celery, spinach, strawberries, grapes, lettuce, melons, watermelon, peas, peppers, summer squash, cucumbers, and tomatoes (40 CFR 180.157). Since there are currently no domestic registrations for mevinphos, these tolerances are referred to as ''import tolerances.'' It is these tolerances that are addressed by the data call-in order.

B. What is the agency's authority for taking this action?

Under section 408(f) of the FFDCA, EPA is authorized to require, by order, submission of data ''reasonably required to support the continuation of a tolerance'' when such data cannot be obtained under the Data Call-In authority of FIFRA section 3(c)(2)(B), or section 4 of the Toxic Substances Control Act (''TSCA''), 15 U.S.C. 2603. A FFDCA section 408 data call-in order may only be issued following publication of notice of the order and a 60-day public comment provision.

A section 408(f) Data Call-In order must contain the following elements:

1. A requirement that one or more persons submit to EPA a notice identifying the person(s) who commit to submit the data required in the order;

2. A description of the required data and the required reports connected to such data;

3. An explanation of why the required data could not be obtained under section 3(c)(2)(B) of FIFRA or section 4 of TSCA; and

4. The required submission date for the notice identifying one or more interested persons who commit to submit the required data and the required submission dates for all the data and reports required in the order. (21 U.S.C. 346a(f)(1)(C)).

EPA may by order modify or revoke the affected tolerances if any one of the following submissions are not made in a timely manner:

1. A notice identifying the one or more interested persons who commit to submit the data;

2. The data itself; or

3. The reports required under a section 408(f) order are not submitted by the date specified in the order. (21 U.S.C. 346a(f)(2)).

C. What preliminary steps were taken by EPA prior to issuing this final order?

On July 28, 2010, EPA issued a proposed data call-in order for the pesticide mevinphos in connection with tolerances for that pesticide under section 408 of the FFDCA, 21 U.S.C. 346a. (75 FR 44181). The proposed data call-in order included the following studies:

1. Comparative Cholinesterase Assay (870.6300);

2. Immunotoxicity Study (870.7800);

3. Directions for Use (860.1200);

4. Crop Field Trials (860.1500)—(broccoli, cabbage, cauliflower, celery, grapes, lettuce, peas, peppers, spinach, summer squash, strawberries, and tomatoes); and

5. Processing Study (tomatoes) (860.1520).

III. Summary of Public Comments Received and Agency Response to Comments

EPA received no comments in response to the July 28, 2010 **Federal Register** notice announcing the Agency's proposed data call-in order for mevinphos. In addition, the Agency has not received any of the data identified in the proposed order as needed to support the mevinphos tolerances.

IV. Final Data Call-in Order

Because no comments were submitted on the proposed order and the data deficiencies identified in the proposed order remain, EPA is today issuing the final data call-in order under FFDCA section 408(f)(1)(C) for mevinphos in the same form as the proposed order and for the reasons set forth in that proposed order. Specifically, EPA is requiring:

1. *Notice of intent to submit data.* A notice identifying the person or persons who commit to submit the data and reports in accordance with Unit V.2. must be submitted to EPA if any person wishes to support the mevinphos tolerances. The notice must be submitted on a section 408(f) Order Response form which is available on the Federal Government's electronic docket, *http:/www.regulations.gov,* under docket ID number EPA–HQ–OPP–2010–0423.

2. *Deadline for submission of notice identifying data submitters.* The notice described in Unit V.1. identifying data submitters must be submitted to and received by EPA on or before *June 29, 2011.* Instructions on methods for submitting this notice (referred to in this order as a ''section 408(f) Order Response form'') are set out under the **ADDRESSES** heading above.

3. *Required data and reports and readlines for submission.* The table below lists the data and reports required to be submitted on mevinphos under this order and the deadlines for the submission of each study and report. The required submission date is calculated from the close of the 90-day period following **Federal Register** publication of the order for providing notice of intent to submit the data. Thus, for example, if EPA generally allows 12 months to complete a study, the required submission date for such a study under this order would be 15 months from the date of publication of the order in the **Federal Register.**

TABLE—REQUIRED DATA AND REPORTS

Harmonized guideline requirement No.	Study title	Timeframe for protocol report submission	Timeframe for data submission
870.6300	Comparative Cholinesterase Assay	March 29, 2012	October 1, 2012.
870.7800	Immunotoxicity Study	March 29, 2012	October 1, 2012.
860.1200	Directions for use	Not required	October 1, 2012.
860.1500	Crop Field Trials (broccoli, cabbage, cauliflower, celery, grapes, lettuce, peas, peppers, spinach, summer squash, strawberries, and tomatoes).	Not Required	September 30, 2013.
860.1520	Processing studies (tomatoes)	Not Required	September 30, 2013.

EPA provided a description of why the required data could not be obtained under section 3(c)(2)(B) of FIFRA or section 4 of TSCA in the proposed order and relies on that description in this final order.

V. Failure To Submit Notice of Intent To Submit Data or Data and Reports

If, within 90 days after publication of this final order, the Agency does not receive a section 408(f) Order Response Form identifying a person who agrees to submit the required data, EPA will revoke the mevinphos tolerances at 40 CFR 180.157. Such revocation is subject to the objection and hearing procedure in FFDCA section 408(g)(2) but the only material issue in such a procedure is whether a submission required by the order was made in a timely fashion.

Additional events that may be the basis for modification or revocation of mevinphos tolerances include, but are not limited to the following:

1. No person submits on the required schedule an acceptable protocol report when such report is required to be submitted to the Agency for review.

2. No person submits on the required schedule acceptable data as required by the final order.

VI. Statutory and Executive Order Reviews

As required by statute, this action requiring submission of data in support of tolerances is in the form of an order and not a rule. (21 U.S.C. 346a(f)(1)(C)). Under the Administrative Procedures Act, orders are expressly excluded from the definition of a rule. (5 U.S.C. 551(4)). Accordingly, the regulatory assessment requirements imposed on

rulemaking do not, therefore, apply to this action.

List of Subjects in 40 CFR Part 180

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

Dated: June 22, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–16355 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

WC Docket No. 11–42, CC Docket No. 96–45, WC Docket No. 03–109; FCC 11–97]

Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes immediate action to address potential waste in the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) by preventing duplicative program payments for multiple Lifeline-supported services to the same individual. On March 4, 2011, the Commission released a Notice of Proposed Rulemaking to reform and modernize Lifeline/Link Up. In the Notice of Proposed Rulemaking, the Commission underscored its commitment to eliminating waste, fraud, and abuse in Lifeline/Link Up and presented a comprehensive set of proposals to better target support to needy consumers and maximize the number of Americans with access to modern communications services. To ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service to qualifying low-income consumers, we adopt measures to prevent, detect and resolve duplicative Lifeline claims for the same consumer. The near-term reforms we adopt here will reduce waste in the Fund and give the Commission flexibility to modernize the Low-Income Program in order to align it with changes in technology and market dynamics, such as the proposal we currently are reviewing to support broadband pilot projects for low-income consumers.

DATES: Effective July 29, 2011.

FOR FURTHER INFORMATION CONTACT: Kimberly Scardino, Attorney Advisor, at 202–418–1442, Telecommunications Access Policy Division, Wireline Competition Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in WC Docket No. 11–42, CC Docket No. 96–45, WC Docket No. 03–109, FCC 11–97, released on June 21, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this order we take immediate action to address potential waste in the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) by preventing duplicative program payments for multiple Lifeline-supported services to the same individual. On March 4, 2011, the Commission released a Notice of Proposed Rulemaking to reform and modernize Lifeline/Link Up. In the *2011 Lifeline and Link Up NPRM,* 76 FR 16482, March 23, 2011, the Commission underscored its commitment to eliminating waste, fraud, and abuse in Lifeline/Link Up and presented a comprehensive set of proposals to better target support to needy consumers and maximize the number of Americans with access to modern communications services. We explained that, while we are considering broader reforms to the program, which we remain committed to complete as soon as possible, it may be necessary for the Commission to take action to address immediately the harm done to the Universal Service Fund (Fund) by duplicative claims for Lifeline support. To ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service to qualifying low-income consumers, we adopt measures to prevent, detect and resolve duplicative Lifeline claims for the same consumer. The near-term reforms we adopt here will reduce waste in the Fund and give the Commission flexibility to modernize the Low-Income Program in order to align it with changes in technology and market dynamics, such as the proposal we currently are reviewing to support broadband pilot projects for low-income consumers.

2. In May 2010, the Commission asked the Federal-State Joint Board on Universal Service to review the low income program to ensure that it is effectively reaching eligible consumers and that oversight continues to be appropriately structured to minimize waste, fraud, and abuse. Meanwhile, under the Commission's oversight and pursuant to the Commission's rules, the Universal Service Administrative Company (USAC) has conducted a series of audits to test compliance with our low income program rules, including audits to determine if there was a problem with duplicative claims for Lifeline. The audits revealed that some low-income subscribers are receiving multiple Lifeline benefits contrary to our program restrictions. The agency already has taken steps to address the situation; in particular, the Office of the Managing Director (OMD) directed USAC to perform a significant number of in-depth data validations (IDVs), which are streamlined inquiries of Lifeline recipients targeted at uncovering duplicative claims for Lifeline support in select states. To ensure prompt action to eliminate duplicative Lifeline support, we not only make clear that qualifying low-income consumers may receive no more than a single Lifeline benefit; we also require an ETC, upon notification from USAC, to de-enroll any subscriber that is receiving multiple benefits in violation of that rule. Further, we direct the Wireline Competition Bureau (Bureau) to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims.

II. Discussion

3. In this order, we amend §§ 54.401 and 54.405 of the Commission's rules to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time. We also amend § 54.405 of the Commission's rules to provide that, upon a finding by USAC that a low-income consumer is the recipient of multiple Lifeline subsidies, any ETC notified that it has not been selected to continue providing Lifeline-discounted service to the consumer shall de-enroll that subscriber from participation in that ETC's Lifeline program pursuant to the procedures described below. As noted below, we do not require a total termination of Lifeline discounts to the consumer in this situation, as the consumer will be permitted to maintain a single Lifeline service with one of the ETCs. We expect USAC to continue to perform in-depth data validations targeted at uncovering duplicative claims for Lifeline support, and we direct the Bureau to send a letter to USAC to implement a process to

detect and resolve duplicative claims that is consistent with the ETCs' proposed Industry Duplicate Resolution Process, as described below. The process we direct USAC to implement is an interim measure that is aimed at resolving duplicative claims in the near term while the Commission considers more comprehensive resolution of this and other issues raised in the *2011 Lifeline and Link Up NPRM.*

A. One Discount per Eligible Consumer

4. With limited exceptions, the Commission has not previously explicitly required ETCs to inquire whether a subscriber is receiving a Lifeline discount from another carrier. In light of the importance of ensuring that eligible low-income consumers continue to receive sufficient but not excessive Lifeline support, we now codify the limitation that an eligible consumer may receive only one Lifeline-supported service. As noted above, recent audit results indicate that some consumers may be receiving Lifeline discounts for more than one service, resulting in potentially millions of dollars in wasteful, excessive support from the Fund. We therefore amend § 54.401(a)(1) of the Commission's rules to adopt a definition of ''Lifeline'' that will ensure that consumers do not, whether inadvertently or knowingly, subscribe to multiple Lifeline-supported services:

*As used in this subpart, Lifeline means a retail local service offering * * * [t]hat is available only to qualifying low-income consumers, and no qualifying consumer is permitted to receive more than one Lifeline subsidy concurrently.*

Similarly, multiple carriers may be seeking reimbursement for Lifeline-supported services provided to a single subscriber, potentially unaware that the subscriber is already receiving Lifeline-supported services from another carrier. To prevent this, we also amend § 54.405(a) of the Commission's rules to require ETCs to offer Lifeline service only to those qualifying low-income consumers who are not currently receiving another Lifeline service from that ETC or from another ETC:

*All eligible telecommunications carriers shall * * * [m]ake available one Lifeline service, as defined in § 54.401, per qualifying low-income consumer that is not currently receiving Lifeline service from that or any other eligible telecommunications carrier.*

5. When the program rules were initially adopted, most consumers had only one option for telephone service: Their incumbent telephone company's wireline service. In light of the advent of multiple Lifeline options for consumers, we now find it necessary to establish this restriction in our rules to ensure that low-income support is being used for its intended purposes—to provide basic telephone service to low-income consumers, rather than to provide multiple supported services to such consumers. We emphasize the importance of ETCs communicating program rules with their subscribers pursuant to 47 CFR 54.405(b). In particular, when enrolling new eligible low income consumers in Lifeline, we expect ETCs will explain in plain, easily comprehensible language that no consumer is permitted to receive more than one Lifeline subsidy. Some consumers may not adequately understand eligibility qualifications for Lifeline services, and may not understand that if they already subscribe to a Lifeline-supported offering they may not subscribe to another such service. It may be important that potential subscribers be made aware of the fact that not all Lifeline services are currently marketed under the name ''Lifeline.''

6. Further, Commission rules and orders specifically limit the amount of support available to qualifying subscribers. Section 54.403(a) of the Commission's rules, for example, establishes the discount amount that ETCs receive for providing Lifeline service to an eligible low-income consumer. When the Commission adopted the first three tiers of Lifeline support in the *Universal Service First Report and Order,* 62 FR 32862, June 17, 1997, it noted that the selected discount amount would serve as a cap on the amount of support available to qualifying low-income consumers. To the extent that a low-income consumer receives discounts for multiple Lifeline-supported services, this would be inconsistent with the per-consumer support amount that ETCs are authorized to receive pursuant to § 54.403(a).

7. While some argue that the FCC should allow for multiple subsidies per residence, that particular issue is not addressed in this Order. This order instead focuses on a narrower problem—reducing duplicative Lifeline subsidies received by the *same individual*—and codifies that restriction in FCC rules. Therefore, this order should not be construed to address the one-per-residential address proposal in the *NPRM.*

8. Most commenters responding to the *2011 Lifeline and Link Up NPRM* stress the importance of resolving duplicative claims for Lifeline service. Several commenters note that a process to detect and resolve duplicative claims will provide an appropriate balance between providing services to eligible participants while guarding against waste, fraud, and abuse. Commenters are split, however, on the methods that should be implemented to detect and address duplicative claims. Many commenters, for example, recommend a national database as the best tool to detect duplicative claims for Lifeline support, while others support requiring ETCs to collect unique household-identifying or personal-identifying information from consumers. At the same time, many ETCs recognize the value in adopting a rule to immediately address potential duplicative claims, while we consider broader reforms.

9. Commenters also have differing opinions on the appropriate remedy for resolving a duplicative claim that has been discovered. A number of commenters support the procedures for remedying duplicative claims set forth in the Bureau's January 21st guidance letter or the alternative procedures proposed in the *2011 Lifeline and Link Up NPRM.* Other commenters urge the Commission to adopt the Industry Duplicate Resolution Process submitted by a group of ETCs subsequent to release of the *2011 Lifeline and Link Up NPRM.* For example, the U.S. Telecom Association recommends that the Commission adopt the Industry Duplicate Resolution Process proposal, noting that the proposal would ''provide a mechanism for starting to address duplicate Lifeline accounts prior to the Commission adopting final rules pursuant to the Low-Income NPRM.'' Other commenters concur. We agree that it is important for the Commission to take immediate action to adopt a process for resolving duplicative claims identified by USAC. We, therefore, direct the Bureau to work with USAC to implement a process to resolve duplicative claims that is consistent with the ETCs' Industry Duplicate Resolution Process and also includes effective outreach to the subscribers identified by USAC as receiving duplicative support. As discussed further below, we require that consumers found to be receiving Lifeline supported services from two or more ETCs receive written notification of this fact and be given 3535 days from the date listed on the written notification to select one Lifeline service provider. In that notice, consumers also must be given information on how they can continue receiving service under the Lifeline program from the ETC of their choosing. Finally, the ETC(s) not chosen by the consumer or otherwise not chosen through the resolution process,

should the consumer not make a choice within the minimum 30-day timeframe, will have five business days to de-enroll the consumer upon receiving notification to do so from USAC.

10. At this time, we decline to adopt certification requirements akin to those contained in certain ETC designation orders. We will continue to evaluate certification options in the context of broader reform contemplated in the *2011 Lifeline and Link Up NPRM.*

B. De-Enrollment

11. We also amend § 54.405 of our rules and adopt a process for de-enrollment of a Lifeline subscriber for the limited near-term purpose of resolving currently known duplicative claims. The de-enrollment process we adopt requires an ETC to de-enroll a subscriber from its Lifeline program within five business days of receiving de-enrollment notification from USAC. An ETC may continue to serve the subscriber as a non-Lifeline subscriber. We note the importance of ETCs communicating clearly with the consumer that he or she will no longer receive a discounted service, but instead must pay the full price for the service and when such payments will be required. The ETC that de-enrolls a subscriber shall not be entitled to receive federal or state Lifeline reimbursement pursuant to our rules following the date of de-enrollment. We find that the adoption of an immediate de-enrollment rule is necessary to reduce the number of individual subscribers who are receiving Lifeline benefits from more than one service provider at the same time, pending fuller consideration of the issues raised in the *2011 Lifeline and Link Up NPRM.*

12. Commenters expressing support for the Industry Duplicate Resolution Process proposal also support the de-enrollment procedure recommended therein. Other commenters recommend that we adopt a notice period—such as the 60 days provided for de-enrollment based on consumer ineligibility—during which consumers may be notified of their impending de-enrollment and, potentially, given an opportunity to cure the problem. In this instance, however, the Administrator (USAC) will send a letter to each subscriber found to be receiving duplicative service, giving them 355 days from the date listed on the letter, which should result in at least 30-days notice after mail-processing time, to choose between their current Lifeline providers or continue receiving service only from the ETC identified by USAC as the default ETC. Under the de-enrollment rule we adopt in this order, a subscriber will maintain a single Lifeline service because, following the minimum 30-day notification period, he or she will only be de-enrolled from the Lifeline program by one of the ETCs from which the subscriber was receiving duplicative Lifeline service. Therefore, unlike the process of de-enrollment for reasons of ineligibility that is currently in place under § 54.405(c), the rule we adopt today is not an ultimate termination of all Lifeline support. As such, we conclude that a notice period of at least 30 days is sufficient and will relieve the unnecessary burden on the Fund of providing duplicative support for individual Lifeline consumers.

13. A few commenters note that states may have their own procedures governing de-enrollment of Lifeline consumers, and recommend that the Commission take these state laws into account. The record is unclear, however, on the scope of any potential conflict between the de-enrollment procedures we adopt herein and state de-enrollment procedures. In situations where a consumer is found to be in receipt of two or more federal subsidies, we believe that a uniform rule applicable to federal Lifeline support will better provide clarity to both ETCs and consumers and will be consistent with our prior rules and orders. Accordingly, we adopt this de-enrollment process as an appropriate and necessary to step towards reducing waste, fraud, and abuse of the federal Lifeline program. Further, because duplicative claims are wasteful and burden the fund, we find that it is in the public interest to swiftly de-enroll consumers who are found to be receiving duplicative federal Lifeline discounts. To the extent that existing state de-enrollment procedures applicable to the federal Lifeline program are in conflict with or serve as an obstacle to implementation of the de-enrollment procedures we adopt herein, they would be preempted.

14. Finally, we note that in the *2011 Lifeline and Link Up NPRM* we asked for input regarding the de-enrollment process for several issues, including other administrative reasons. Specifically, we proposed that ETCs be required to de-enroll their Lifeline subscribers when the subscriber does not use his or her Lifeline-supported service for 60 days and fails to confirm continued desire to maintain the service or the subscriber does not respond to the eligibility verification survey. The rule adopted today is not intended to address the issues of administrative disqualification based on non-usage or failure to respond during the verification process. We take this action today to protect the Fund while we continue to evaluate other appropriate proposals and until we adopt a more comprehensive package of reforms in response to the *2011 Lifeline and Link Up NPRM.*

III. Procedural Matters

A. Paperwork Reduction Act Analysis

15. This report and order adopts new or revised information collection requirements, subject to the Paperwork Reduction Act of 1995 (''PRA''). These information collection requirements will be submitted to the Office of Management and Budget (''OMB'') for review under Section 3507(d) of the PRA. The Commission published a separate notice document elsewhere in this issue of the **Federal Register** inviting comment on the new or revised information collection requirement(s) adopted in this document. The requirement(s) will not go into effect until OMB has approved it, and the Commission has published a notice announcing the effective date of the information collection requirement(s). In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, we have reviewed the comments and assessed the effects of these information requirements, and find that the collection of information requirements will not have a significant impact on small business concerns with fewer than 25 employees.

B. Congressional Review Act

16. The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (NPRM) to this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

D. Need for, and Objectives of, the Order

18. The Commission is required by section 254 of the Telecommunications

Act of 1996, as amended, to promulgate rules to implement the universal service provisions of the Act. Consistent with the requirements of the Act, the Commission adopted rules that reformed the universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Among other programs, the Commission adopted a program to provide discounts that make basic, local telephone service affordable for low-income consumers. The Commission has not systematically re-examined the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) since the passage of the 1996 Act. During this period, consumers have increasingly turned to wireless service, and Lifeline/Link Up now provides many participants discounts on wireless phone service.

19. In this order we take immediate action to address potential waste in the program by preventing low-income consumers from receiving duplicative Lifeline-supported services. Specifically, we amend §§ 54.401 and 54.405 of the Commission's rules to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time. We also amend section 54.405 of the Commission's rules to provide that, upon a finding by USAC that a low-income consumer is the recipient of multiple Lifeline subsidies, any eligible telecommunications carrier (''ETC'') that is not selected to continue providing Lifeline-discounted service to the consumer shall de-enroll that subscriber from participation in that ETC's Lifeline program.

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

20. In public comments filed in response to the IRFA, issues were raised regarding the Commission's proposal to remedy duplicative claims for Lifeline support and the proposal's effects on small businesses. The National Telecommunications Cooperative Association (NTCA) stated that the Commission's initial proposal to detect and remedy duplicative claims, as set forth in a January 21 guidance letter, would put the burden of eliminating duplicative claims primarily upon ETCs and would constitute an untenable position for small businesses. Specifically, NTCA stated that ''the ETCs must chase down the consumer and the consumer will receive at least two confusing notifications. Once the subscriber chooses a provider, that provider must notify USAC and the other ETC that it is the chosen one.'' In its Reply Comments, Montana Independent Telecommunications Systems (MITS), an association of rural telecommunications providers, asserted that the proposed rules would require small carriers to assume multiple roles as ''fact finders, decision makers, and enforcers,'' which would be ''costly and unduly burdensome to small telecommunications carriers.'' We have taken measures to address these concerns expressed by commenters.

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

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

1. Wireline Providers

22. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.

23. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Seventy of which have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the

Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

24. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

25. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

26. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

27. *Pre-paid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for pre-paid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these pre-paid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of pre-paid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of pre-paid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

28. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, at of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers. We do not believe 800 and 800-Like Service Subscribers will be affected by our proposed rules, however we choose to include this category and seek comment on whether there will be an effect on small entities within this category.

2. Wireless Carriers and Service Providers

29. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

30. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002

Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

31. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

32. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

33. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

34. The second category, i.e., All Other Telecommunications, comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

35. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the *2008 Trends Report,* 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

3. Internet Service Providers

36. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

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

37. This order has two components: clarification of the definition of Lifeline service and establishment of de-enrollment procedures for consumers receiving duplicative Lifeline supported services. These modifications of our rules are necessary to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met and to eliminate waste, fraud, or abuse in the Lifeline program.

38. *Clarification of the Definition of Lifeline & Carrier Obligation.* In this order, we modify the definition of Lifeline service to clarify that no qualifying low-income consumer is permitted to receive more than one Lifeline subsidy concurrently. This clarification places no additional burdens upon ETCs.

39. *De-Enrollment Procedures for Duplicate Service.* As part of the effort to reduce waste in the program, by this order, we adopt a rule requiring ETCs to de-enroll any Lifeline subscriber upon notification from the Universal Service Administrative Company (USAC) that the Lifeline subscriber should be de-enrolled from participation in that ETC's Lifeline program because the subscriber is receiving Lifeline service from another ETC. An ETC will be required to de-enroll a subscriber from its Lifeline program within five business days of receiving de-enrollment notification from USAC. Compliance with this requirement will place a burden on ETCs to de-enroll customers upon receiving notice from USAC. However, this burden will be minimal.

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

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

41. We sought to minimize the burdens imposed on small entities where doing so would not compromise the goals of the universal service low-income mechanism. In order to minimize the impact on ETCs, and under the advisement of a number of industry representatives, we have placed the burden of checking for duplicate claims upon USAC, rather than ETCs. Furthermore, the duplicate resolution process set forth in the order requires USAC to notify an ETC which customers should be de-enrolled from the ETC's Lifeline program.

I. Report to Congress

42. The Commission will send a copy of the order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the order and FRFA (or summaries thereof) will also be published in the **Federal Register.**

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.401 by revising paragraph (a)(1) to read as follows:

§ 54.401 Lifeline defined.

(a) * * *

(1) That is available only to qualifying low-income consumers, and no qualifying consumer is permitted to receive more than one Lifeline subsidy concurrently.

* * * * *

■ 3. Amend § 54.405 by revising paragraph (a), and adding paragraph (e), to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

* * * * *

(a) Make available one Lifeline service, as defined in § 54.401, per qualifying low-income consumer that is not currently receiving Lifeline service from that or any other eligible telecommunications carrier, and

* * * * *

(e) *De-enrollment.* Notwithstanding § 54.405(c) and (d) of this section, upon notification by the Administrator to any ETC in any state that a subscriber is receiving Lifeline service from another eligible telecommunications carrier and should be de-enrolled from participation in that ETC's Lifeline program, the ETC shall de-enroll the subscriber from participation in that ETC's Lifeline program within 5 business days. An ETC shall not be eligible for Lifeline reimbursement as described in §§ 54.403 and 54.407 for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

[FR Doc. 2011–16312 Filed 6–28–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 204

RIN 0750–AH25

Defense Federal Acquisition Regulation Supplement (DFARS); Assignment of Order Codes (DFARS Case 2011–D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to specify Defense Procurement and Acquisition Policy, Program Development and Implementation, as the office responsible for maintaining order code assignments. The order code procedures are moved from the DFARS to its companion resource, DFARS Procedures, Guidance, and Information.

DATES: *Effective Date:* June 29, 2011

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

Director, Defense Procurement and Acquisition Policy letter dated September 21, 2010, replaced the Defense Logistics Agency with Defense Procurement and Acquisition Policy, Program Development and Implementation, as the responsible office for the maintenance of all order code assignments for use in the first two positions of an order number when an activity places an order against another activity's contract or agreement. In addition, the procedures and addresses for order code monitors are moved to the DFARS companion resource, DFARS Procedures, Guidance, and Information.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because an initial regulatory flexibility analysis is only required for proposed or interim rules that require publication for public comment (5 U.S.C. 603) and a final regulatory flexibility analysis is only required for final rules that were previously published for public comment, and for which an initial regulatory flexibility analysis was prepared (5 U.S.C. 604).

This final rule does not constitute a significant DFARS revision as defined at FAR 1.501–1 because this rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Government. Therefore, publication for public comment under 41 U.S.C. 1707 is not required.

III. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 204

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 204 continues to read as follows:

PART 204—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 204 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise section 204.7005 to read as follows:

204.7005 Assignment of order codes.

(a) Defense Procurement and Acquisition Policy, Program Development and Implementation, maintains the order code assignments for use in the first two positions of an order number when an activity places an order against another activity's contract or agreement (*see* 204.7004(d)(2)).

(b) Contracting activities shall follow the procedures at PGI 204.7005 for requests for assignment of or changes in two-character order codes.

[FR Doc. 2011–16320 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212 and 222

RIN 0750–AH34

Defense Federal Acquisition Regulation Supplement; Extension of Restrictions on the Use of Mandatory Arbitration Agreements (DFARS Case 2011–D035)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to implement section 8102 of the DoD and Full-Year Continuing Appropriations Act, 2011 and similar sections in subsequent appropriations acts, to extend the restriction on the use of mandatory arbitration agreements, when awarding contracts that exceed $1 million, to use of 2011 and subsequent fiscal year funds appropriated or otherwise made available by this Act or any subsequent DoD appropriation act. Section 8102 allows the Secretary of Defense to waive applicability to a particular contractor or subcontractor, if determined necessary to avoid harm to national security.

DATES: *Effective date:* June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8102 of the DoD and Full-Year Continuing Appropriations, 2011 (Pub. L. 112–10), prohibits the use of Fiscal Year (FY) 2011 funds for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of $1 million, if the contractor restricts its employees to arbitration for claims under title VII of the Civil Rights Act of 1964, or tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

This rule does not apply to the acquisition of commercial items. Section 8102(b) requires the contractor to certify compliance by subcontractors.

Additionally, enforcement of the mandatory arbitration provisions related to the covered areas, does not affect the enforcement of other aspects of an agreement that is not related to those areas.

This rule allows the Secretary of Defense to waive applicability to a particular contract or subcontract, if determined necessary to avoid harm to national security.

Section 8102 of the DoD and Full-Year Continuing Appropriations, 2011, extends the restrictions of section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118). In implementing section 8116, public comments were obtained under DFARS Case 2010–D004.

This final rule does not constitute a significant DFARS revision as defined at FAR 1.501–1 because the requirements are already in place and this final rule merely extends the existing DFARS coverage. Therefore, there is no significant cost or administrative impact on contractors or offerors resulting from issuance of this rule and public comment is not required in accordance with 41 U.S.C. 1707(a).

Since DoD anticipates that this will be an ongoing requirement, this rule applies to use of all subsequent fiscal year funds appropriated or otherwise made available under subsequent DoD appropriations acts. If the restriction is removed at a future date, DoD will amend the DFARS accordingly.

II. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and public comment is not required in accordance with 41 U.S.C. 1707.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 212 and 222

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212 and 222 are amended as follows:

■ 1. The authority citation for 48 CFR parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.503 by revising paragraph (a)(xi) to read as follows:

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.

(a) * * *

(xi) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010

(Pub. L. 111–118) and similar sections in subsequent DoD appropriations acts.

* * * * *

■ 3. Amend section 212.504 by revising paragraph (a)(xix) to read as follows:

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(xix) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118) and similar sections in subsequent DoD appropriations acts.

* * * * *

Subpart 222.74—Restrictions on the Use of Mandatory Arbitration Agreements

■ 4. Revise section 222.7400 to read as follows:

222.7400 Scope of subpart.

This subpart implements section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118) and similar sections in subsequent DoD appropriations acts.

■ 5. Amend section 222.7402 as follows:

■ (a) Revise the introductory text to paragraph (a) as set forth below; and

■ (b) Revise paragraph (b) as set forth below.

222.7402 Policy.

(a) Departments and agencies are prohibited from using funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111–118) or subsequent DoD appropriations acts for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of $1 million, unless the contractor agrees not to—

* * * * *

(b) No funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111–118) or subsequent DoD appropriations acts may be expended unless the contractor certifies that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce, any provision of any agreement, as described in paragraph (a) of this section, with respect to any employee or independent contractor performing work related to such subcontract.

■ 6. Revise section 222.7405 as follows:

222.7405 Contract clause.

Use the clause at 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, in all solicitations and contracts (including task or delivery orders and bilateral modifications adding new work) valued in excess of $1 million utilizing funds appropriated or otherwise made available by the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118) or subsequent DoD appropriations acts, except in contracts for the acquisition of commercial items, including commercially available off-the-shelf items.

[FR Doc. 2011–16315 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212 and 252

RIN 0750–AH27

Defense Federal Acquisition Regulation Supplement; Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items (DFARS Case 2011–D034)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 866 of the National Defense Authorization Act for Fiscal Year 2011. Section 866 authorized the Secretary of Defense to establish a pilot program to assess the feasibility and advisability of acquiring military-purpose nondevelopmental items in accordance with the streamlined procedures of the pilot program.

DATES: *Effective Date:* June 29, 2011.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 29, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2011–D034, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''DFARS Case 2011–D034'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D034.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D034'' on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D034 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations Council, *Attn:* Mr. Manuel Quinones, OUSD(AT&L)DPAP(DAR), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Instructions: Please submit comments only and cite ''DFARS Case 2011–D034'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, telephone 703–602–8383.

SUPPLEMENTARY INFORMATION:

I. Background

Section 866 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 (Pub. L. 111–383), enacted on January 7, 2011, authorized the Secretary of Defense to carry out a pilot program to assess the feasibility and advisability of acquiring military-purpose nondevelopmental items in accordance with the streamlined procedures of the pilot program. The authority for this pilot program expires on January 6, 2016. Under this pilot program, DoD may enter into contracts with nontraditional defense contractors for the purpose of—

—Enabling DoD to acquire items that otherwise might not have been available to DoD;

—Assisting DoD in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and

—Protecting the interests of the United States in paying fair and reasonable prices for the item or items acquired.

This pilot program is designed to test whether the streamlined procedures, similar to those available for commercial items, can serve as an effective incentive for nontraditional defense contractors to (1) channel investment and innovation into areas that are useful to DoD and (2) provide items developed exclusively at private expense to meet validated military requirements.

II. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows.

DoD is issuing an interim rule to amend the DFARS to implement section 866 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). Section 866 authorized the Secretary of Defense to establish a pilot program to assess the feasibility and advisability of acquiring military-purpose nondevelopmental items.

The objective of this rule is to establish a new DoD pilot program at DFARS Subpart 212.71, entitled Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items. Under this pilot program, DoD may enter into contracts with nontraditional defense contractors for the purpose of (1) Enabling DoD to acquire items that otherwise might not have been available to DoD; (2) assisting DoD in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and (3) protecting the interests of the United States in paying fair and reasonable prices for the item or items acquired. It is anticipated that items similar to commercial all-terrain vehicles or programmable robots, which can be modified for use in a contingency environment, may result from use of this authority. The legal basis is section 866 of the National Defense Authorization Act for Fiscal Year 2011.

Since this is a new pilot program, data to support potential impact to small entities is not yet available. Consistent with the overall purpose of the program to attract nontraditional defense contractors, DoD anticipates that this rule will have a positive economic impact to small entities.

The interim rule affects contractors that are not currently performing and have not performed, for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any of the following for DoD—

—Any contract or subcontract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 1502) and the regulations implementing such section; or

—Any other contract in excess of the certified cost or pricing data threshold under which the contractor is required to submit certified cost or pricing data.

This interim rule does not impose any new reporting, recordkeeping or other compliance requirements on contractors. There are no rules that duplicate, overlap or conflict with this rule. There are no known significant alternatives to the rule.

Accordingly, DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D034) in correspondence.

IV. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comments. The rule implements section 866 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). Section 866 was effective upon enactment on January 7, 2011. This action is necessary as DoD continues to search for ways to acquire and deploy innovative technologies and solutions to meet urgent operational needs. Without this interim rule, DoD will be unable to test whether the streamlined procedures similar to those available for commercial items can serve as an effective incentive for non-traditional defense contractors to (1) channel investment and innovation into areas that are useful to DOD and (2) provide items developed exclusively at private expense to meet validated military requirements.

List of Subjects in 48 CFR Parts 212 and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend part 212 by adding new subpart 212.71 to read as follows:

Subpart 212.71—Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items

212.7100 Scope.
212.7101 Definitions.
212.7102 Pilot program.
212.7103 Solicitation provision.
212.7100 Scope.

This subpart establishes the pilot program authorized by section 866 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

212.7101 Definitions.

Military-purpose nondevelopmental item, nondevelopmental item, and *nontraditional defense contractor,* as used in this subpart, are defined in the provision at 252.212–7002.

212.7102 Pilot program.

212.7102–1 Contracts under the program.

The contracting officer may enter into contracts with nontraditional defense contractors for the acquisition of military-purpose nondevelopmental items. See PGI 212.7102 for file documentation requirements. Each contract entered into under the pilot program shall—

(a) Be awarded using competitive procedures;

(b) Be a firm-fixed-price contract, or a fixed-price contract with an economic price adjustment clause;

(c) Be in an amount not in excess of $50 million;

(d) Provide—

(1) For the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and

(2) That failure to make delivery as provided for under paragraph (d)(1) may result in termination for cause; and

(e) Be—

(1) Exempt from the requirement to submit certified cost or pricing data;

(2) Exempt from the cost accounting standards under section 26 of the Office of Procurement Policy Act (41 U.S.C. 1502); and

(3) Subject to the requirement to provide data other than certified cost or pricing data for the purpose of price reasonableness determinations.

212.7102–2 Reporting requirements.

Departments and agencies shall prepare a consolidated annual report to provide information about contracts awarded under this pilot authority. The report shall be submitted to the Office of the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), by October 31 each year in accordance with the procedures at PGI 212.7102. See PGI 212.7102 for annual reporting format.

212.7102–3 Sunset of the pilot authority.

(a) The authority to carry out the pilot program described in this subpart expires on January 6, 2016.

(b) The expiration under paragraph (a) of this section of the authority to carry out the pilot program will not affect the validity of any contract awarded under the pilot program before the expiration of the pilot program under that paragraph.

212.7103 Solicitation provision.

Use the provision at 252.212–7002, Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items, in all solicitations that meet the applicability criteria of 212.7102–1 for this pilot program.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend part 252 by adding new section 252.212–7002 to read as follows:

252.212–7002 Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items.

As prescribed in 212.7103, use the following provision:

PILOT PROGRAM FOR ACQUISITION OF MILITARY-PURPOSE NONDEVELOPMENTAL ITEMS (JUN 2011)

(a) *Definitions.* As used in this provision—

Military-purpose nondevelopmental item means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. An item shall not be considered to be developed at private expense if development of the item was paid for in whole or in part through—

(1) Independent research and development costs or bid and proposal costs, per the definition in FAR 31.205–18, that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

(2) Foreign government funding.

''Nondevelopmental item'' is defined in FAR 2.101 and for the purpose of this subpart also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement of DFARS 212.7102–2(d)(1).

Nontraditional defense contractor means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any of the following for the Department of Defense—

(1) Any contract or subcontract that is subject to full coverage under the cost accounting standards prescribed pursuant to Section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. section 1502) and the regulations implementing such section; or

(2) Any other contract in excess of the certified cost or pricing data threshold under which the contractor is required to submit certified cost or pricing data.

(b) *Notice.* This is a procurement action under section 866 of the National Defense Authorization Act for Fiscal Year 2011, Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items, and is subject to the limitations outlined in DFARS 212.7102.

(c) *Representation.* By submission of its offer, the offeror represents that it is a nontraditional defense contractor.

(End of provision)

* * * * *

[FR Doc. 2011–16316 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

RIN 0750–AH30

Defense Federal Acquisition Regulation Supplement; Management of Manufacturing Risk in Major Defense Acquisition Programs (DFARS Case 2011–D031)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule to implement section 812 of the National Defense Authorization Act for Fiscal Year 2011. Section 812(b)(5) instructs DoD to issue guidance that, at a minimum, shall require appropriate consideration of the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

DATES: Effective June 29, 2011. Comments on the interim rule should be submitted in writing to the address shown below on or before August 29, 2011 to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D031, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''DFARS Case 2011–D031'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D031.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D031'' on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D031 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, *Attn:* Mr. Dustin Pitsch, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s),

please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 703 602–0289.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 215.3, Source Selection. It amends DFARS 215.304(c) by adding paragraph (iv) to state that the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors shall be considered as a part of the source selection process for major defense acquisition programs.

II. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD has performed an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The interim rule will apply to DoD Major Defense Acquisition Program contractors and subcontractors. As such, it is not expected that this rule will have a significant impact on a significant number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows.

This interim rule amends the DFARS to implement section 812 of the National Defense Authorization Act for FY 2011 (Pub. L. 111–383) (10 U.S.C. 2430 note). Section 812(b)(5) requires appropriate consideration of the manufacturing readiness and manufacturing readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

The rule will apply to DoD Major Defense Acquisition Program contractors and subcontractors. Most major defense acquisition programs are awarded to large concerns as they are of a scope too large for any small business to perform. As such, it is not expected that this rule will have a significant impact on a significant number of small entities.

The interim rule imposes no reporting, recordkeeping, or other information collection requirements. The proposed rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule that would meet the requirements of the statute.

DoD invites comments from small businesses and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 601. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D031) in correspondence.

IV. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 812 of the National Defense Authorization Act for Fiscal Year 2011, enacted on January 7, 2011. Section 812 requires implementation within 180 days, by July 6, 2011, and an interim rule is required to meet the implementation date. This action is necessary in order to require contracting officers to consider the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 215

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 215 is amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 215 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 215.304 by adding paragraph (c)(iv) to read as follows:

215.304 Evaluation factors and significant subfactors.

(c) * * *

(iv) In accordance with section 812 of the National Defense Authorization Act for Fiscal Year 2011, consider the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

[FR Doc. 2011–16319 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AG93

Defense Federal Acquisition Regulation Supplement; Definition of Sexual Assault (DFARS Case 2010–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to the Defense Federal Acquisition Regulation Supplement (DFARS) to ensure contractor employees accompanying U.S. Armed Forces are made aware of the DoD definition of sexual assault as defined in DoD Directive 6495.01, Sexual Assault Prevention and Response Program, and that many of the offenses addressed in the definition are covered under the Uniform Code of Military Justice. Further, sexual assault offenses in the definition, which are not covered by the Uniform Code of Military Justice, may nevertheless have consequences to contractor employees under DFARS

clause 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

DATES: *Effective date:* June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

DoD Inspector General audit D–2010–052, entitled ''Efforts to Prevent Sexual Assault/Harassment Involving DoD Contractors During Contingency Operations,'' dated April 16, 2010, provided recommendations for the Under Secretary of Defense for Acquisition, Technology, and Logistics to develop requirements in all DoD contracts supporting contingency operations to ensure contractor employees accompanying U.S. Armed Forces are aware of the definition of ''sexual assault.''

A proposed rule was published in the **Federal Register** at 75 FR 73997, on November 30, 2010. That rule proposed adding at DFARS 252.225–7040(d)(3) a new requirement for compliance with laws and regulations. The proposed change required the contractor to ensure that contractor employees accompanying U.S. Armed Forces be aware of the DoD definition of ''sexual assault'' as defined in DoD Directive (DoDD) 6495.01, ''Sexual Assault Prevention and Response Program.'' The rule also proposed to also inform contractor employees accompanying U.S. Armed Forces, that such offenses in the definition are covered under the Uniform Code of Military Justice, Title 10, Chapter 47 (*http://www.constitution.org/mil/ucmj19970615.htm*). DoDD 6495.01, ''Sexual Assault Prevention and Response Program,'' is available at *http://www.dtic.mil/whs/directives/corres/pdf/649501p.pdf.*

II. Discussion and Analysis

A. Public Comments

Two respondents submitted positive comments in response to the proposed rule. These respondents supported DoD's inclusion of the reference to this definition in the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

B. Other Changes

DoD revised the final rule to—

—Clarify that many of the offenses addressed in the DoDD 6495.01, ''Sexual Assault Prevention and Response Program,'' definition of sexual assault are covered under the Uniform Code of Military Justice with a reference to paragraph (e)(2)(iv) of the clause; and

—Require contractors to provide awareness to contractor employees that sexual assault offenses in the definition, which are not covered by the Uniform Code of Military Justice, may nevertheless have consequences to contractor employees under DFARS clause 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, paragraph (h)(1).

III. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this final rule will not have significant economic impact on a substantial number of small entities within the meaning for the Regulatory Flexibility Act, 5 U.S.C. 604, *et seq.,* because the rule does not impose any additional significant requirements on small businesses.

This DFARS rule requires contractors to ensure their employees are aware of the DoD definition of sexual assault contained in DoDD 6495, Sexual Assault Prevention and Response Program, and how that definition relates to existing contractual conditions, i.e., many of the offenses addressed in the definition are covered under the Uniform Code of Military Justice. DFARS 252.225–7040(e)(2)(iv) previously informed contractors that contractor personnel authorized to accompany U.S. Armed Forces in the field are subject to the jurisdiction of the Uniform Code of Military Justice. Offenses in the definition, which are not covered by the Uniform Code of Military Justice, may nevertheless have consequences to contractor employees under DFARS clause 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, paragraph (h)(1).

A proposed rule published in the **Federal Register** at 75 FR 73997, on November 30, 2010, invited comments from small businesses, and other interested parties. No comments were received from small entities on the affected DFARS subpart with regard to small businesses.

V. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 252.225–7040 by adding paragraph (d)(3) to read as follows:

252.225–7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States

* * * * *

(d) * * *

(3) The Contractor shall ensure that contractor employees accompanying U.S. Armed Forces are aware—

(i) Of the DoD definition of ''sexual assault'' in DoDD 6495.01, Sexual Assault Prevention and Response Program;

(ii) That many of the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause); and

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

* * * * *

(End of clause)

[FR Doc. 2011–16396 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AH32

Defense Federal Acquisition Regulation Supplement; Successor Entities to the Netherlands Antilles (DFARS Case 2011–D029)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to revise the definitions of ''Caribbean Basin country'' and ''designated country'' due to the change in the political status of the islands that comprised the Netherlands Antilles.

DATES: *Effective date:* June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Telephone 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends definitions of ''Caribbean Basin country'' and ''designated country'' at the clauses 252.225–7021, Trade Agreements, and 252.225–45, Balance of Payments Program—Construction Materials Under Trade Agreements.

On October 10, 2010, Curacao and Sint Maarten became autonomous territories of the Kingdom of the Netherlands. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands.

The Netherlands Antilles was designated as a beneficiary country under the Caribbean Basin Initiative (see 19 U.S.C. 2702). According to the initiative, successor political entities remain eligible as beneficiary countries.

Therefore, the definitions have been revised to replace ''Netherlands Antilles'' with the five separate successor entities.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule.

Therefore, an initial regulatory flexibility analysis has not been performed because an initial regulatory flexibility analysis is only required for proposed or interim rules that require publication for public comment (5 U.S.C. 603) and a final regulatory flexibility analysis is only required for final rules that were previously published for public comment, and for which an initial regulatory flexibility analysis was prepared (5 U.S.C. 604).

This final rule does not constitute a significant FAR (or DFARS) revision as defined at FAR 1.501–1 because this rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Government. The rule only reflects the political status of the islands that comprised the Netherlands Antilles. This will have no impact on any entities in the United States. Therefore, publication for public comment under 41 U.S.C. 1707 is not required.

IV. Paperwork Reduction Act

This rule will not change the burden of any of the approved information collection requirements for part 225 currently approved by the Office of Management and Budget under OMB Clearance 0704–0229, Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and related clauses.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.212–7001 [Amended]

■ 2. In section 252.212–7001, amend paragraph (b)(12)(i) by removing the clause date ''(NOV 2009)'' and adding in its place ''(JUN 2011)''.

■ 3. In section 252.225–7021, remove the clause date ''(NOV 2009)'' and add in its place ''(JUN 2011)'' and revise paragraph (a)(3)(iv) to read as follows:

252.225–7021 Trade agreements.

* * * * *

(a) * * *

(3) * * *

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

* * * * *

■ 4. In section 252.225–7045, remove the clause date ''(JAN 2009)'' and add in its place ''(JUN 2011)'' and in paragraph (a), revise paragraph (4) of the definition of ''designated country'' to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

(a) * * *

Designated country * * *

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

* * * * *

[FR Doc. 2011–16373 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA–2010–0353; Notice No. 10–9]

Clarification of the Fireworks Approvals Policy

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

ACTION: Clarification.

SUMMARY: In this document, PHMSA is responding to comments received from its initial Notice No. 10–9 clarifying PHMSA's policy regarding the fireworks approvals program. Furthermore, in this document PHMSA is restating our policy clarification in that we will issue firework classification approvals only to fireworks manufacturers, and accept firework classification applications only from fireworks manufacturers or their designated agents. This policy clarification is intended to enhance safety by ensuring accountability of the manufacture of the device, and reducing the number of duplicate applications and approvals being issued for identical fireworks devices.

DATES: The policy clarification discussed in this document is effective June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Introduction

With regard to fireworks approvals, the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), Section 173.56(j)(3) states that ''[t]he manufacturer applies in writing to the Associate Administrator following the applicable requirements in APA Standard 87–1, and is notified in writing by the Associate Administrator that the fireworks have been classed, approved, and assigned an EX number.''

On December 17, 2010, PHMSA published the initial Notice No. 10–9 (75 FR 79085) clarifying its policy, consistent with the HMR, to issue firework classification approvals only to fireworks manufacturers, and accept firework classification applications only from fireworks manufacturers or their designated agents. The Notice also sought comment on that clarification. In today's document, PHMSA is responding to those comments and restating its policy clarification on the fireworks approval program.

The comments received covered various topics, including the economic impact, language barrier issues, jurisdictional issues, implementation time, and the legal issues associated with the Notice itself. Furthermore, commenters also expressed concern on how the policy would affect the EX application volume, the control and distribution of fireworks designs, PHMSA's ability to ensure compliance with and to enforce the clarification, and the relationship with other Federal regulations.

II. Background

The pyrotechnic industry is a global logistics supply chain comprised of mostly foreign fireworks manufacturers and domestic importers, retailers, distributors, and consumers. The transportation of an explosive (fireworks device) requires an EX classification approval issued by PHMSA, commonly referred to as an EX number. The EX number is a unique identifier that indicates the device has been classed and approved for transportation in the U.S., and is specific to a particular device as specified in 49 CFR 173.56(j) and the APA Standard 87–1.

PHMSA understands that it is a common industry practice for fireworks devices produced by one manufacturer to be marketed and sold under different trade names. Further, each retailer, importer or distributor, in addition to the manufacturer, applies for and receives an EX classification approval for the identical firework device. This practice has resulted in PHMSA processing multiple applications and issuing multiple approvals for the same firework device.

For some time, PHMSA has accepted fireworks applications from manufacturers, importers, retailers and distributors, and has issued the classification approvals to those stakeholders in the pyrotechnic industry. This redundant and burdensome process does not promote the safe transportation of explosives (fireworks devices); instead, it impedes the conduct of business for both the fireworks industry and PHMSA.

In this document, PHMSA is responding to comments on its policy clarification to issue fireworks classification approvals only to fireworks manufacturers. PHMSA believes that this policy will enhance safety by ensuring accountability of the manufacture of the device and reducing the number of duplicate applications and approvals being issued for identical fireworks devices. The manufacturer of the device is the only entity that can ensure the approved formulation is the actual formulation used to create the device.

III. List of Commenters, Beyond-the-Scope Comments, and General Comments

PHMSA received 18 comments in response to the initial Notice No. 10–9. Some of the commenters requested that we expedite the issuance of this document to finalize the clarification of the policy. We recognize their concerns and have made every effort to publish this document in an expeditious manner. While a minority of the commenters supported the clarification to the fireworks policy in initial Notice 10–9, a majority of the commenters had reservations about it. The comments, as submitted to the docket for the initial Notice No. 10–9 (Docket No. PHMSA–2010–0353), may be accessed via *http://www.regulations.gov* and were submitted by the following individuals, companies and associations:

(1) Ms. Elizabeth Knauss; PHMSA–2010–0353–0002
(2) Huisky Trading Co., Ltd.; PHMSA–2010–0353–0003
(3) Extreme Pyrotechnics LLC; PHMSA–2010–0353–0004
(4) Rozzi's Famous Fireworks; PHMSA–2010–0353–0005
(5) Dangerous Goods Advisory Council (DGAC); PHMSA–2010–0353–0006
(6) Kellner's Fireworks Inc.; PHMSA–2010–0353–0007
(7) B.J. Alan Company; PHMSA–2010–0353–0008
(8) DG Advisor, LLC; PHMSA–2010–0353–0009
(9) International Fireworks Shippers Alliance (IFSA); PHMSA–2010–0353–0010
(10) Law Office of Douglas Mawhorr; PHMSA–2010–0353–0011
(11) Pyrotechnics Guild International; PHMSA–2010–0353–0012
(12) Institute of Makers of Explosives (IME); PHMSA–2010–0353–0013
(13) National Fireworks Association; PHMSA–2010–0353–0014
(14) Galaxy Fireworks, Inc.; PHMSA–2010–0353–0017
(15) American Pyrotechnics Association (APA); PHMSA–2010–0353–0018
(16) Alliance of Special Effects & Pyrotechnic Operators, Inc. (ASEPO); PHMSA–2010–0353–0019
(17) Fireworks Over America; PHMSA–2010–0353–0021
(18) American Promotional Events Inc.; PHMSA–2010–0353–0023

Beyond-the-Scope Comments

PHMSA received ten comments beyond the scope of this document. One commenter requests PHMSA consider waste management of used or defective fireworks when proposing any amendments to regulations related to

the transport of fireworks. This document does not propose any regulatory amendments; rather, we are clarifying existing policy. While PHMSA agrees environmental impacts should be considered when proposing amendments to regulations, no regulatory changes were proposed in the Notice, and therefore, waste management of fireworks is beyond the scope of this document.

PHMSA received nine comments suggesting alternative approaches aimed at improving the current fireworks approvals process. These alternative approaches ranged from small modifications and improvements to the current system, to the complete elimination of the requirement for EX numbers for consumer fireworks. PHMSA values input from the stakeholders involved in the fireworks approval process; however, the alternative approaches suggested are beyond the scope of this document and will not be addressed here. The scope of this document is limited to PHMSA's issuance of fireworks approvals only to fireworks manufacturers. While we agree that certain alternative approaches to fireworks approvals merit PHMSA's consideration, we urge those commenters who submitted these beyond-the-scope approaches to request a change in the regulations by filing the recommendations as petitions for rulemakings in accordance with 49 CFR 106.95 and 106.100.

General Comments

Implementation Concerns

PHMSA received comments both in support of and in opposition to the policy clarification in the initial Notice No. 10–9. A number of these concerns dealt specifically with how PHMSA's implementation of the clarification would affect the pyrotechnics industry. These comments are discussed in detail below.

Implementation. Commenters suggested that if the clarification presented in the initial Notice No. 10–9 were adopted, there would need to be a substantial implementation time. PHMSA received two comments concerned with the amount of time for implementing the clarification and the effect on industry.

PHMSA understands the concerns the fireworks industry has expressed about the ramifications of implementing this action. In response to these concerns PHMSA has devised an implementation plan that addresses these concerns (see section: IV. Summary of Policy Clarification). As of the date of the publication of this document in the Federal Register, classification approval applications will be issued only to the manufacturer. Fireworks approvals applications submitted on behalf of entities other than the manufacturer to PHMSA prior to the publication date of this document in the **Federal Register** (*i.e.* already accepted by PHMSA) will continue to be reviewed, processed, and if approved, issued to the applicant.

Impact on Fireworks EX Application Volume. Specifically, PHMSA received comments regarding what impact the clarification would have on the actual volume of fireworks EX applications received. PHMSA received comments from seven companies opposing the policy clarification asserting that there will be an increase in the volume of applications that PHMSA will have to process. However, one company supported the policy clarification indicating that it is an ''effort to reduce redundancy and increase process efficiency.''

PHMSA does not agree with the commenters' concerns pertaining to application volume. We believe that this is a safety and data management issue. Furthermore, we do not make policy decisions of this type based on the potential volume of applications. Nonetheless, PHMSA believes that there would not be an appreciable increase to the number of firework applications received. However, if such an increase occurs, it will be temporary and over time application volume will decrease.

One commenter asserted that an EX approval allows multiple manufacturers to use the same EX number. This is incorrect. The use of the same EX number by multiple manufacturers constitutes a violation of the HMR. Only the manufacturer identified in the approval application is authorized to use the assigned EX number. PHMSA does not issue the same EX approval number to more than one holder/manufacturer.

Language Barriers. A majority of fireworks manufacturers are located outside the U.S. where English is not a first language. Several commenters expressed concern that implementing the policy clarification could be complicated by language barriers present between PHMSA officials and foreign fireworks manufacturers. Commenters cited examples of Chinese companies not understanding why an application is rejected and not being able to correct errors when re-applying.

PHMSA does not agree with the commenters' concerns pertaining to a language barrier. All companies based outside of the U.S. are required to have a U.S. designated agent (see § 105.40) to support the company in various issues, including language translation. PHMSA has issued many approvals to foreign companies without any confusion or misunderstanding as a result of language barriers. When language barriers arise, it is the U.S. designated agent's responsibility to resolve any communication problems and technical issues.

Control and Distribution of Fireworks Designs. Three commenters addressed the effect of initial Notice No. 10–9 on the control and distribution of fireworks design types. U.S. fireworks distributors expressed their concern that they will no longer have exclusive control over their firework products if the clarification presented in the initial Notice No. 10–9 were implemented. These commenters oppose the policy clarification based on possible trademark infringement. The commenters who addressed this issue indicated that, if adopted, the policy clarification would deprive them of their ability ''to trademark private label products that are proprietary to U.S. companies.''

PHMSA does not agree with the commenters that the policy clarification would result in trademark infringement. The holder of the EX approval for a firework device bears no relevance to a company's protected trademark. The U.S. Patent and Trademark Office defines a trademark as ''a word, phrase, symbol or design, or a combination thereof, that identifies and distinguishes the source of the goods of one party from those of others.'' Trademark infringement occurs when a competitor uses a mark that is identical or confusingly similar to the protected trademark. An EX approval number is assigned by the Associate Administrator to an explosive device that has been evaluated under 49 CFR 173.56. Fireworks EX approval applications are reviewed by transportation specialists who evaluate the composition and safety of the firework device. Thus, a protected trademark and an EX approval number are issued separately by different U.S. agencies for distinctly separate purposes, which are mutually exclusive.

Ability to Ensure Compliance/Enforce. Various commenters suggested that the policy clarification in the initial Notice No. 10–9 could prove difficult for PHMSA to enforce. In addition, commenters suggested that the policy clarification could decrease regulatory clarity and make it more difficult for the regulated entities to comply with the HMR.

One commenter opposed the policy clarification expressing concern that by placing the maintenance of the EX

number wholly in the hands of the manufacturer, the U.S. user or seller has no capacity to assure that the numbers are being administered and applied correctly. They state: ''it is the importers and end users who are transporting the products in the U.S., not the manufacturers. The importers and end users are the ones who must demonstrate compliance.''

While firework classification approvals will only be issued to fireworks manufacturers, PHMSA will accept fireworks approval applications from the manufacturer's U.S. designated agent on behalf of the manufacturer, as well as the manufacturer itself. PHMSA disagrees that the burden to follow the requirements of the approval falls solely on the importer or end user once it becomes part of the U.S. transportation system. In fact, at that point it is too late to correct a defect with the firework device or any improper use of an EX number. While it is incumbent upon the manufacturer and the importer to ensure the fireworks device meets the EX approval requirements, it is not PHMSA's intent to regulate the relationship between these two entities. All participants throughout the supply chain will be held accountable for their regulatory responsibility. Furthermore, § 171.2(b) provides that ''each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform, and each offeror may rely on information provided by another offeror, unless that offeror knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the other offeror is incorrect.''

One commenter opposed the policy clarification because it is unclear how PHMSA will obtain new resources to be able to conduct a ''fitness review'' on each factory in China.

PHMSA currently conducts fitness reviews on foreign entities for many types of approval applications. Our standard procedure, after we determine that an application is complete, is to evaluate the application to determine whether the Applicant is qualified to hold the type of approval for which it has applied, in this case, a fireworks approval. During the review, PHMSA checks the application to determine whether the Applicant followed the requirements of the HMR. While we do not typically conduct an onsite inspection of the Applicant's facilities prior to granting or denying an approval application for fireworks, we may conduct an inspection if necessary to determine the Applicant's fitness. Furthermore, the Associate Administrator may modify, suspend, or terminate an approval in accordance with 49 CFR 107.121 if necessary to avoid a risk of significant harm to persons or property.

One commenter opposed the policy clarification because it is likely to divert PHMSA's scarce resources and PHMSA does not have the means to develop a global investigative capability. The commenter claimed this would allow for ''front'' or ''shell'' companies to exploit the policy clarification.

PHMSA does not agree with the commenter about its global investigative capability. Part of PHMSA's mission is to implement the best course of action to support the safety of the products produced through shared responsibility and focused accountability. PHMSA currently conducts international as well as domestic inspections. If a company is found to be noncompliant with the HMR, PHMSA may impose civil penalties or seek criminal prosecution for knowing, willful, or reckless violations of the HMR.

One commenter opposed the policy clarification because it would potentially complicate the approvals process.

PHMSA does not agree that the policy clarification would complicate the approvals process. Rather, we believe that the policy clarification simplifies the process. By issuing one EX number for each type of firework device, as opposed to issuing multiple EX numbers for the same fireworks device, we will reduce redundancy of approvals for the same device and increase the overall efficiency of the approvals process. Additionally, by ensuring uniform classification of fireworks devices and eliminating application duplicity, we will reduce the potential risks of the shipment of unapproved fireworks, thereby enhancing the safe transport of fireworks devices.

Regulatory Clarity. PHMSA received several comments concerning regulatory clarity. Commenters are concerned about the definition of manufacturer being different between regulatory areas. One commenter suggested that PHMSA would have a different definition of ''manufacturer'' for entities who construct packages than that used to define a fireworks device maker. One commenter states ''PHMSA would be creating inconsistencies where a firework approval obtained through § 173.56(f) could only be held by the person who formulates or produces the firework while no such limit would apply for fireworks approved through the process used for other explosives.''

PHMSA disagrees with the commenters because it is within the agency's discretion to interpret its own regulations and clarify our policies. However, we may in the future consider adding a definition for manufacturer through notice and comment rulemaking.

Economic and Transportation Effects

Several commenters expressed concern about the possible economic ramifications caused by the implementation of the fireworks approval policy clarification. Although most of the comments received addressed economic impacts indirectly, five commenters explicitly addressed the economic impact of the policy clarification.

Economic Impact. PHMSA received several comments claiming that if PHMSA issues approvals only to manufacturers, it will increase costs, discourage competition, and interfere with trade and commerce. Commenters expressed specific concerns that companies could go out of business and proprietary information could be revealed.

PHMSA does not believe the policy clarification pertaining to the fireworks approvals process will affect costs, competition, or interfere with trade and commerce because we are not changing the regulations pertaining to fireworks approvals. Rather, we are clarifying the existing regulations by advising the public that a manufacturer, or its designated U.S. agent, may submit an approvals application. After review and approval, PHMSA will issue an EX number to the manufacturer specified in the approval application. Despite not being the approval holder, importers and end users may still offer and transport fireworks devices under the EX approval issued to the manufacturer.

Commenters also expressed concern that proprietary information may be released to the public. To determine whether records are releasable, PHMSA complies with the Freedom of Information Act (FOIA), 5 U.S.C. section 552, and any other applicable laws. Should PHMSA receive a FOIA request for information marked ''confidential commercial'' or where PHMSA has some other reason to believe that confidential commercial information may be contained in the record, Departmental regulations in 49 CFR § 7.17 require that PHMSA consults with the submitter of the information to provide an opportunity to submit any written objections and specific grounds for non-disclosure before PHMSA determines whether to release the information.

Transportation Safety. Four commenters objected to the initial Notice No. 10–9 on the grounds that no safety benefit would be realized from the policy clarification in the application process. One commenter stated ''because it is required to identify the product manufacturer on all applications, the Agency has access to manufacturer information regardless of whether the approval is issued to an importer, exporter and/or distributor.'' PHMSA disagrees with the commenter's assertion. Issuing EX numbers exclusively to manufacturers will provide greater accountability on the part of the manufacturer.

One commenter stated ''we are not aware of any situations where there was a safety or transportation problem attributable to the fact that the EX approval was obtained by the entity that worked with the factory and was responsible for the fireworks once they arrived in the United States.'' While PHMSA agrees with the commenter about the safety record of fireworks in transportation, we believe that this policy clarification will nonetheless make fireworks device transportation safer. The manufacturer of the device is the only entity that can ensure the formulation that is approved is the actual formulation used to create the device. Furthermore, eliminating redundant applications for the same fireworks device will reduce the potential risk of unapproved fireworks being transported, thereby enhancing the overall safety of the fireworks devices in transport.

Administrative Issues

Several commenters expressed concern over the manner in which PHMSA is clarifying its fireworks approvals policy. Other commenters raised concerns regarding the effect the policy clarification would have on other sections of the HMR. A couple of commenters expressed legal concerns regarding the policy clarification. These comments are discussed in detail below.

Manner in which the Clarification was Presented. Three commenters expressed concern with how we presented our policy clarification. Specifically, these commenters suggested that the policy clarification presented in that Notice may be better addressed in a rulemaking action where comments can be addressed in a more substantive manner. Commenters claimed that PHMSA is indicating a regulatory change through that Notice, and thus, should conduct notice and comment rulemaking.

PHMSA is not required under the Administrative Procedure Act to initiate informal rulemaking to clarify a policy. Section 173.56(j) specifically states that the manufacturer applies in writing and is notified by the Associate Administrator that the fireworks have been classed, approved, and assigned an EX-number. It is the responsibility of the manufacturer to sign the application and certify that the device conforms to the APA Standard 87–1, which PHMSA has incorporated by reference in the HMR. In this document, we are clarifying our policy to issue EX approvals to manufacturers only to coincide with the plain language of § 173.56(j).

Effects on the HMR. While, as cited above, some commenters were concerned that the clarification would result in ambiguity in the regulations pertaining to the definition of different types of manufacturers, (*e.g.,* fiberboard box manufacturers and fireworks manufacturers), commenters also raised concern regarding the potential precedent set by the policy clarification in the initial Notice No. 10–9. Specifically, commenters maintained that the clarification presented in the initial Notice No. 10–9 could affect the definition of ''manufacturer'' in other parts of the HMR. In addition, concern was raised that this could set a precedent for how explosives, other than fireworks, are treated. One commenter, for example, is concerned that this policy may affect requirements for package manufacturers.

PHMSA does not agree with the commenters that this document would affect other provisions of the HMR. In this document we are clarifying our policy with respect to fireworks approvals only.

Legal Issues. PHMSA received a comment opposing the policy clarification based on the doctrine of laches. The commenter indicated that PHMSA's ''neglect to assert a right, the lapse of time associated therewith and resultant disadvantage to another bars the neglecting party from asserting the right.''

PHMSA does not agree with the commenter's application of the doctrine of laches. Laches is the equitable counterpart to the statute of limitations that bars a claim when a delay in bringing the claim is unreasonable and results in prejudice to the opposing party. In general, laches cannot be imputed to the Federal government and is not applicable to an agency's determination to clarify policy.

Another commenter opposed the policy clarification asserting because PHMSA has not thoroughly explained its reasons for changing the policy.

PHMSA agrees that we should provide a reasoned basis for the policy clarification, but disagrees that we have failed to do so. As stated in the initial Notice No. 10–9, we believe issuing fireworks approvals only to manufacturers will enhance safety by ensuring uniform classification of fireworks devices, eliminating application duplicity, and minimizing the potential risks of the shipment of unapproved fireworks.

PHMSA received multiple comments opposing the policy clarification based on our lack of jurisdiction over foreign manufacturers.

PHMSA agrees that we lack jurisdiction over foreign manufacturers who manufacture fireworks, but do not offer them for transportation in commerce. However, the Federal Hazardous Materials Transportation Law (49 U.S.C. 5101, *et. seq.*) provides the authority to regulate the safe transportation of hazardous materials in interstate, intrastate, and foreign commerce. If a foreign manufacturer does not merely manufacture the fireworks, but is also an offeror and offers fireworks for transportation in commerce within the U.S., then our regulations would apply and the foreign manufacturer may be held accountable for violations of the HMR. Furthermore, foreign manufacturers may have an economic incentive to obtain EX approvals given the market in the U.S. for foreign fireworks.

One commenter opposed the policy clarification based on Executive Order No. 13563, Improving Regulation and Regulatory Review, dated January 18, 2011. The commenter indicated that, if adopted the policy clarification would not support the spirit of the Executive Order and would create more burdens on both the regulated industry and government.

PHMSA does not agree that the policy clarification would contradict the spirit of the Executive Order, which addresses an agency's adoption of new regulations and does not restrict the agency's ability to interpret its existing regulations or to make policy clarifications.

IV. Summary of Policy Clarification

Based on the comments received and our responses to those comments, PHMSA will proceed to implement the policy clarification discussed in this document. The implementation strategy is detailed below:

1. All EX numbers issued prior to June 29, 2011 will continue to remain in effect.

2. All pending fireworks approval applications submitted to PHMSA prior to June 29, 2011 will continue to be

reviewed, processed, and if approved, issued to the applicant.

3. All fireworks approval applications submitted to PHMSA after June 29, 2011 will only be accepted from manufacturers *or* their designated agents. Designated agents, as specified in § 105.40, may submit applications on behalf of the manufacturer as long as the agent or the manufacturer signs the application and certifies that the device for which approval is requested conforms to APA Standard 87–1, and that the descriptions and technical information contained in the application are complete and accurate, in accordance with § 173.56(j)(3). PHMSA will review and process each application, and if approved, will issue an EX approval number only to the manufacturer specified in the application.

Issued in Washington, DC, on June 21, 2011 under authority delegated in 49 CFR part 1.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2011–15969 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 76, No. 125
Wednesday, June 29, 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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–HQ–2011–2]

Defining Larger Participants in Certain Consumer Financial Products and Services Markets

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and Request for Comment.

SUMMARY: The Bureau of Consumer Financial Protection (''CFPB''), created by the Consumer Financial Protection Act of 2010 (''Act''), is required to implement a program to supervise certain nondepository covered persons for compliance with Federal consumer financial laws. The scope of supervision coverage varies for different product markets. Section 1024 of the Act provides that the CFPB may supervise covered persons in the residential mortgage, private education lending, and payday lending markets. For other markets for consumer financial products or services, the supervision program generally will apply only to a ''larger participant'' of these markets, as defined by rule. The CFPB is required to issue an initial ''larger participant'' rule not later than July 21, 2012, one year after the designated transfer date.

This notice and request for comment (''Notice'') seeks public comment on the development of such a rule. After considering any comments on this Notice and other relevant information, the CFPB will draft and publish a proposed rule for public comment.

DATES: Comments must be received by August 15, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically. Comments should refer to ''CFPB Docket No. CFPB–HQ–2011–2.'' Comments should be submitted to:

- *Web site: http://www.regulations.gov.*
- *Mail:* Nondepository Supervision, Consumer Financial Protection Bureau, 1801 L Street, NW., Room 513–H, Washington, DC 20036.
- *Hand Delivery/Courier in Lieu of Mail:* Department of the Treasury, 1500 Pennsylvania Avenue, NW., Consumer Financial Protection Bureau, Washington, DC 20220.

You may view copies of this Notice and any comments we receive at *http://www.regulations.gov* within CFPB Docket No. CFPB–HQ–2011–2. The CFPB will make such comments available for public inspection and copying in Department of the Treasury's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. Do not include sensitive personal information, such as account numbers or social security numbers. Your comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Nicholas Krafft, Research Analyst, (202) 435–7252, Nondepository Supervision, Consumer Financial Protection Bureau, 1801 L Street, NW., Room 513–H, Washington, DC 20036.

SUPPLEMENTARY INFORMATION:

I. Background: The CFPB's Nondepository Supervision Program

On July 21, 2010, the Consumer Financial Protection Act of 2010 (''Act'') [1] established the Bureau of Consumer Financial Protection (''CFPB''). One of the CFPB's specific objectives under the Act is to ensure that Federal consumer financial law [2] is ''enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition.'' [3] One of the ways the Act accomplishes this objective is by giving the CFPB authority to supervise not only certain banks, thrifts, and credit unions (''depository institutions''), and their affiliates, but also certain other entities that provide consumer financial products or services (''nondepository covered persons'').[4]

The CFPB is required under Section 1024 of the Act to implement a risk-based supervision program for certain nondepository covered persons. The purposes of this supervision program are to: (1) Assess nondepository covered persons for compliance with Federal consumer financial law; (2) obtain information about such persons' activities and compliance systems or procedures; and (3) detect and assess risks to consumers and to the consumer financial markets.[5] In implementing this supervision program, the CFPB may, among other things, require submission of reports and conduct onsite examinations of a covered person to assess the covered person's compliance with Federal consumer financial law and achieve the other purposes described above. The CFPB also has the authority to require, by rule, registration of certain covered persons. Such registration could help support the implementation of the supervision program.[6]

The scope of coverage of this supervision program under Section 1024 varies by consumer financial product or service market. Section 1024 specifically grants the CFPB authority to supervise, regardless of size, covered persons that offer or provide to consumers the following enumerated consumer financial products or services: (1) Origination, brokerage, or servicing of residential mortgage loans secured by

[1] The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

[2] *See* Act § 1002(14) (defining ''Federal consumer financial law'').

[3] *Id.* § 1021(b)(4).

[4] *See id.* § 1002(6) (a ''covered person'' means ''(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.''). A ''service provider'' is a person that provides a material service to a covered person in connection with the offering or provision of a consumer financial product or service. *Id.* § 1002(26). Service providers also may be subject to CFPB supervision. *See, e.g., id.* § 1024(e). Under the Act, ''person'' means ''an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.'' *Id.* § 1002(19).

[5] *Id.*§ 1024(b)(1).

[6] *Id.* §§ 1022(c)(7) and 1024(b)(7).

real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans.[7] By contrast, for all other markets, the CFPB's nondepository supervisory authority generally applies only to any covered person that is ''a larger participant of a market for other consumer financial products or services,'' as defined by rule by the CFPB.[8] The CFPB's initial larger participant rule must be issued not later than one year after the designated transfer date.[9]

Once it has the requisite authority, the CFPB may immediately begin its nondepository supervision program in the mortgage, payday lending, and private education lending markets,[10] including through examinations of covered persons in these markets, based on the CFPB's assessment of relevant risks. The CFPB will also propose a rule to define a ''larger participant'' of other markets for consumer financial products or services. The ''larger participant'' rule will not impose new substantive consumer protection requirements on any nondepository entity, but rather will provide to the CFPB the authority to supervise larger participants in certain markets—including by requiring reports and conducting examinations—to ensure, among other things, that they are complying with existing Federal consumer financial law. However, a covered person will remain subject to any Federal consumer financial law applicable to its activities regardless of whether such covered person is subject to the CFPB's supervisory authority.

Once the scope of the nondepository supervision program is established, the Act requires that the operation of the program be based on an assessment by the CFPB of the ''risks posed to consumers in the relevant product markets and geographic markets.'' [11] The factors to be considered in making this assessment include asset size, volume of transactions involving consumer financial products or services,[12] risks to consumers, the extent to which institutions are subject to state supervision, and any other factor that the CFPB determines to be relevant.[13]

Through this notice and request for comment (''Notice''), the CFPB seeks public comment on the issues presented in drafting that proposed rule.[14] While this Notice presents a number of particular questions for comment, the CFPB invites public comment on all issues relevant to the development of this proposal.

II. Issues in Developing a Larger Participant Rule

There are a number of issues that arise in connection with determining how to identify a larger participant in a market, including both broad issues that cut across markets and specific issues relating to particular markets that may be covered by an initial rule. The CFPB is also considering which markets to include in an initial rule. Markets identified in this Notice for possible inclusion are: debt collection, consumer reporting, consumer credit and related activities, money transmitting, check cashing and related activities, prepaid cards, and debt relief services.

These issues and related questions are discussed below.

A. Criteria and Thresholds To Define a Larger Participant

In considering how to define which nondepository covered persons are larger participants in a particular market, a number of approaches are available. Determining the appropriate criteria and thresholds to be used should be approached in light of the applicable statutory language, which refers to a ''larger participant'' of a market.[15] This statutory language is not limited only to the ''largest'' participants in each market, but at the same time does not encompass smaller market participants.

In determining the criteria to measure the size of market participants, the CFPB should consider criteria that will allow it to administer the program efficiently by readily identifying larger participants based on objective available data. Whatever the criteria used, the Act provides that, for purposes of computing the activity levels of a market participant, the activities of the participant ''shall be aggregated'' with the activities of nondepository ''affiliated companies.'' [16] Examples of potential criteria that could be used to define larger participants of a market include one or a combination of the following: annual number of transactions in the market; annual value of transactions (*e.g.,* total loan volume); annual receipts or revenue; geographic coverage (*e.g.,* number of states where engaged in business); asset size; and outstanding loan balances.

The thresholds used to define a larger participant under the criteria used could be based on an absolute approach (*e.g.,* a covered person with an annual loan volume of $X is a larger participant), or it could be based on a relative approach (*e.g.,* every market participant having an annual loan volume of a certain amount relative to other participants). These approaches are not necessarily exclusive: multiple criteria (each with its own threshold) could be used in identifying larger participants.

A related issue is whether the CFPB should tailor the criteria and thresholds to each market, given the significant differences among various markets. For example, a larger participant in a market for consumer credit might be defined using criteria and thresholds different from those used in the market for consumer debt collection. Alternatively, the initial rule might be structured around a single set of criteria and thresholds applicable across all markets.

The CFPB seeks public comment on the following:

- Should a larger participant be defined based on the relative size of the participants within a market (*e.g.,* whether the number of annual transactions of the market participants is above the mean or median) or, alternatively, should a larger participant be defined based on an absolute threshold, such as doing business in a specified number of states?
- Should more than one criterion be used to determine the size of a market participant, such as the number of annual transactions and/or the number of states in which the participant conducts business?
- Should the same criteria and thresholds be used to define a larger participant for every market, or should different criteria and thresholds be tailored for each market based on the market's characteristics?

B. Data To Be Used in Measuring Criteria

Whatever criteria are selected for a particular market, the CFPB must be able to measure the criteria as they relate to specific market participants.

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[7] *Id.* § 1024(a)(1)(A), (D), and (E).

[8] *Id.* §§ 1024(a)(1)(B) and 1024(a)(2). The CFPB also has the authority to supervise any covered person that it ''has reasonable cause to determine, by order, after notice and a reasonable opportunity * * * to respond'' that such covered person ''is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' *Id.* § 1024(a)(1)(C).

[9] *Id.* § 1024(a)(2). The CFPB must consult with the Federal Trade Commission prior to issuing a rule.

[10] *Id.* § 1024(a)(1)(A), (D), and (E).

[11] *Id.*§ 1024(b)(2).

[12] *See id.* § 1002(5) (defining ''consumer financial product or service'') and § 1002(15) (defining ''financial product or service'').

[13] *Id.* § 1024(b)(2).

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

[15] *Id.* § 1024(a)(1)(B).

[16] *Id.* § 1024(a)(3)(B).

For example, if the criteria selected to define a larger participant includes the number of states in which a market participant conducts business, the CFPB will need access to data establishing which covered persons meet the specified threshold for that criterion. The data that could be used in connection with an initial rule might include: (1) Public data, including from sources such as the Securities and Exchange Commission's online EDGAR database, and state and federal licensing and registration records; (2) nonpublic state or federal supervisory or other data; (3) commercial data, such as proprietary industry market analyses; and (4) data obtained directly from market participants.

The CFPB is considering the establishment of a registration program for certain covered persons through a future rulemaking.[17] If such a registration program is established, the CFPB may receive relevant information from covered persons subject to that program that would supplement existing data used to measure market participants.[18] This additional data could be useful in determining which covered persons meet the applicable thresholds.

The CFPB seeks public comment on the following:

- For each market, what reliable data sources are available and would be suitable for the CFPB to use in its larger participant determinations?
- What data should the CFPB collect through a registration process to use in its larger participant determinations?

C. Measurement Dates and Supervision Timeframes

In measuring the size of market participants, an initial rule might require the CFPB to determine whether a covered person is a larger participant by measuring applicable criteria for the immediately preceding calendar year or years, or at one or more points in time. For example, if the annual number of transactions is used, coverage could be determined by evaluating the market participant's annual transactions for the previous calendar year or years. An initial rule would also need to consider how to treat certain significant events relevant to ''larger participant'' determinations, such as the merger of market participants.

A related issue is how long a market participant should be subject to supervision once it has met the thresholds for being a larger participant. For example, if a market participant meets the larger participant threshold in one year, for how long should it be subject to CFPB supervision if in the subsequent year its size falls below the applicable threshold? One consideration relevant to these issues is whether the period should be long enough to permit the CFPB to conduct a subsequent examination if an initial examination found violations of law or otherwise raised compliance concerns.

The CFPB seeks public comment on the following:

- In evaluating a market participant's size, should the CFPB measure the size of a market participant based on the relevant criteria for the previous one year, two years, or more—or at one or more than one points in time? Should a market participant be a larger participant if it meets the applicable threshold in any one of a specified number of prior years, or only if it meets the threshold in the most recent period?
- What factors should the CFPB consider in connection with the treatment of events such as the merger of market participants during an assessment time period?
- Are there alternative approaches for establishing an assessment time period that the CFPB should consider?
- For what length of time should a market participant be subject to supervision once it meets the applicable threshold? How should subsequent changes in the participant's size be treated?

III. Consideration of Markets To Include in the Initial Rule

A variety of consumer financial products and services offered by nondepository covered persons could be subject to the CFPB's supervision program under a larger participant rule. The CFPB is interested in public comment regarding which markets for consumer financial products and services should be addressed in an initial rule. Specifically, the CFPB solicits comment on whether the categories discussed below should be covered in the initial rule, whether each particular category consists of a single market or multiple markets, and whether other markets also should be addressed.[19] Although the CFPB anticipates including certain specified markets in an initial rule, additional markets may be added through subsequent rulemakings.

A. Debt Collection

With regard to the collection of debt related to consumer financial products or services, market participants may collect on behalf of another entity that owns the debt, or collect on their own behalf after purchasing the debt from a creditor or other holder of the debt. The debt collection market affects a large number of consumers. About 30 million individuals, or 14% of consumers, now have debt that is subject to the collections process, and the average debt those consumers have under collection is approximately $1,400.[20]

B. Consumer Reporting

A range of actors engage in consumer reporting-related activities. A handful of large credit bureaus compile and maintain data and provide credit reports on individual consumers. The reports include credit history and other credit-related information furnished to the credit bureaus by certain creditors and other entities. Additional market participants resell information compiled by the large credit bureaus, or operate as specialty consumer reporting agencies that offer such services as verifying consumer check writing history to facilitate the acceptance of consumers' personal checks by retailers. The consumer reporting market is of fundamental importance to the market for consumer credit. The Consumer Data Industry Association estimates that there are over 54 billion updates to consumer reports, and 3 billion reports issued, each year. In addition, each of the large credit bureaus maintains credit files on over 200 million consumers.[21]

C. Consumer Credit and Related Activities

There are a variety of activities relating to consumer credit that might be covered in an initial rule.[22] Market participants include finance companies, consumer lenders, and loan servicers

[17] *See id.* §§ 1022(c)(7) and 1024(b)(7).

[18] The number of covered persons that may be subject to these registration requirements may be larger than the number that will be subject to CFPB supervision under section 1024(a)(1).

[19] The participants in markets discussed in this Notice may be subject to any number of Federal consumer financial laws depending on their specific activities that they are engaged in. Examples of such laws include the Truth in Lending Act, the Fair Debt Collection Practices Act, the Equal Credit Opportunity Act, and the Fair Credit Reporting Act, and, more broadly, the relevant portions of the Consumer Financial Protection Act. *See* Act § 1002(14) (defining ''Federal consumer financial law'').

[20] Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit* (February 2011).

[21] ANSI–BBB, *Identity Theft Prevention and Identity Management Standards* (2008).

[22] Mortgage originators, brokers, and servicers, payday lenders, and private education lenders are specifically enumerated in Section 1024(a) as subject to the CFPB's supervisory authority. Accordingly, whether covered persons engaged in those activities are subject to CFPB supervision would not depend upon the content of a larger participant rule. *See* Act at § 1024(a)(1)(A), (D), and (E).

and brokers. Relevant products include, for example, secured credit such as automobile loans, and unsecured consumer installment loans. Revenues in auto lending and financing, and other sales financing, total $60 billion annually.[23] The CFPB's authority relating to consumer credit providers is subject to important exceptions in the Act, including exceptions relating to vehicle dealerships and retailers and merchants.[24] The CFPB will need to consider carefully how the respective consumer credit-related product and service markets should be defined.

D. Money Transmitting, Check Cashing, and Related Activities

Money transmitting generally involves the receipt of funds by a transmitter that then sends the funds via wire transfer, ACH transfer, or other means to a recipient in another location on behalf of a consumer, for a fee. The check cashing business generally involves the cashing of consumer checks by retail establishments for a fee. The sale of money orders and related items provides products consumers can use to pay bills or conduct other financial transactions. Typically, businesses engaged in the foregoing activities offer a menu of several of these products and services to consumers.

Money transmitting is a significant industry. Total transaction volume for money transmission was approximately $72 billion in 2005, with $40 billion of that amount transmitted internationally.[25] The CFPB will need to consider whether to include money transmitting alone, or money transmitting and related consumer financial products and services such as check cashing, as a market or markets to be covered in an initial rule. If multiple products are included, the CFPB will need to consider carefully how the respective product and service markets should be defined.

E. Prepaid Cards

A prepaid card product is one in which funds are paid into an individual or pooled account by, or on behalf of, a consumer and can be accessed by the consumer via a card (and in some cases, by alternative means). Prepaid card products include general purpose reloadable open-loop payment cards,[26] non-reloadable open loop payment cards, closed-loop gift or store cards,[27] electronic benefits transfer cards,[28] and payroll cards.[29] Multiple parties may be involved in offering or providing a prepaid card product. However, under the Act, the definition of ''consumer financial product or service'' would not include the sale or reloading of prepaid cards by persons that do not exercise ''substantial control'' over the terms or conditions of the stored value provided to the consumer.[30]

Prepaid card products affect a large number of consumers. Over $140 billion dollars in transactions were made with reloadable open-loop prepaid cards in 2009.[31] Over 11 million households have used these cards.[32] The CFPB will need to consider carefully whether to cover all or only certain types of prepaid card products in an initial rule, and, for those included, how to define the relevant market or markets.

F. Debt Relief Services

Debt relief services refer to consumer financial products and services offered to reduce a consumer's debt.[33] Providers generally offer one of two products or services.[34] Providers of ''debt management plans,'' typically non-profit credit counseling agencies, work with creditors to develop repayment plans for consumers. These plans typically permit a consumer to repay the full credit balance owed under renegotiated terms, such as substantially reduced interest rates and fees. For consumers who are unable to repay the full balance owed, ''debt settlement'' entities offer to negotiate with a consumer's creditors to enable the consumer to make a lump-sum payment of less than the entire balance owed to the creditor, thereby settling the debt obligation. Statistics on the size of these industries, as well as the size of other debt relief services, are not readily available.[35] The CFPB will need to consider carefully how to define any debt relief provider market or markets included in an initial rule.

The CFPB seeks public comment on the following:

- What consumer financial product or service markets should be included in the initial rule?
- How should the financial product or service markets included in the initial rule be defined? In addition to considerations relating to how to define the relevant product markets, should all markets be national in scope, or should the CFPB consider regional or other geographic markets in certain instances? If regional or other geographic markets should be considered, describe with specificity how they could be defined.
- What specific criteria should be measured, and threshold levels set, to define a larger participant in the markets identified above, and in any other markets that should be included in an initial rule? What data should be used to assess whether the thresholds have been met?

Dated: June 21, 2011.

Alastair Fitzpayne,

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

[FR Doc. 2011–15984 Filed 6–28–11; 8:45 am]

BILLING CODE 4810–25–P

[23] IBIS World Industry Report. *Auto Leasing, Loans and Sales Financing in the U.S.* (2009).

[24] *See* Act § 1029 (dealership exclusion); *id.* § 1027(a) (merchant and retailer exception).

[25] KPMG, *2005 Money Services Business Industry Survey Study* (2005).

[26] An open-loop card usually carries the logo of a major payment network, such as American Express, Discover, MasterCard, or Visa, and can be used wherever those cards are accepted.

[27] A closed-loop card usually can be used only at one store, chain of stores, or group of stores (such as stores in a shopping mall). *See* Act § 1002(28)(B) (setting forth exclusion for certain closed-loop cards).

[28] Electronic benefits transfer cards are made available by the Federal government and by state and local governments to allow individuals to access government benefits such as Social Security or unemployment compensation.

[29] Payroll cards are made available by employers to employees to access their salaries.

[30] Act § 1002(5) and (15)(A)(v)(I) and (II).

[31] Federal Reserve Board, *Noncash Payment Trends in the United States: 2006–2009* (Apr. 2011).

[32] Federal Deposit Insurance Corporation, *National Survey of Unbanked and Underbanked Households* (Dec. 2009).

[33] Principally, these providers offer to reduce consumers' credit card debt, but some providers offer to reduce medical or tax debt. Not included in the debt relief market are providers of debt relief services that relate to mortgage debt, commonly referred to as mortgage loan modification or foreclosure relief services. Section 1024(a)(1)(A) and (b) of the Act gives the CFPB authority to supervise those providers without regard to size.

[34] *See generally,* Federal Trade Commission, *Telemarketing Sales Rule: Final Rule* (debt relief services amendments), 75 FR. 48458 (Aug. 10, 2010).

[35] *Id.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0646; Directorate Identifier 2010–NM–224–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed

AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Cracked nuts * * * were found on aircraft's production line during routine post assembly inspection. Investigation revealed that the cracks resulted from hydrogen embrittlement combined with high hardness. Non-conformity with certified mechanical properties of this fastener can potentially lead to an unsafe condition.

The unsafe condition is cracked nuts in multiple locations (including aileron fittings, rudder tab assembly and mounting structure for power drive units) could result in failure of affected locations and consequent reduced controllability or reduced structural capability of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 15, 2011.

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

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

For service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206; telephone 800–810–4853; fax 912–965–3520; e-mail *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0646; Directorate Identifier 2010–NM–224–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 57–10–06–18, dated July 27, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Cracked nuts (P/N [part number] MS–21042L3) were found on aircraft's production line during routine post assembly inspection. Investigation revealed that the cracks resulted from hydrogen embrittlement combined with high hardness. Non-conformity with certified mechanical properties of this fastener can potentially lead to an unsafe condition.

The unsafe condition is cracked nuts in multiple locations (including aileron fittings, rudder tab assembly and mounting structure for power drive units) could result in failure of affected locations and consequent reduced controllability or reduced structural capability of the airplane. The required actions include replacing nuts having P/N MS–21042L3, and in certain locations, a one time radiographic inspection for cracked nuts and replacing any cracked nuts. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Gulfstream Aerospace LP has issued Service Bulletin 200–51–366, dated March 30, 2010, including Appendix A: Israel Aircraft Industries Document IS951400E, Radiographic Inspection of Self-Locking Nut P/N MS21042L3, Revision A, dated January 25, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 2 products of U.S. registry. We also estimate that it would take about 227 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered

under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $38,590, or $19,295 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace LP: Docket No. FAA–2011–0646; Directorate Identifier 2010–NM–224–AD.

Comments Due Date

(a) We must receive comments by August 15, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 airplanes, certificated in any category, serial numbers 219 through 231 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 51: Standard Practices/Structures.

Reason

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

Cracked nuts * * * were found on aircraft's production line during routine post assembly inspection. Investigation revealed that the cracks resulted from hydrogen embrittlement combined with high hardness. Non-conformity with certified mechanical properties of this fastener can potentially lead to an unsafe condition.

The unsafe condition is cracked nuts in multiple locations (including aileron fittings, rudder tab assembly and mounting structure for power drive units) could result in failure of affected locations and consequent reduced controllability or reduced structural capability of the airplane.

Compliance

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

Actions

(g) Within 12 months after the effective date of this AD, do the applicable actions specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions in Gulfstream Service Bulletin 200–51–366, dated March 30, 2010, including Appendix A: Israel Aircraft Industries Document IS951400E, Radiographic Inspection of Self-Locking Nut P/N MS21042L3, Revision A, dated January 25, 2010.

(1) For all airplanes: Replace nuts having part number (P/N) MS–21042L3 in the applicable areas identified in Steps 4, 5, 6, and 7 of the Accomplishment Instructions of Gulfstream Service Bulletin 200–51–366, dated March 30, 2010, including Appendix A: Israel Aircraft Industries Document IS951400E, Radiographic Inspection of Self-Locking Nut P/N MS21042L3, Revision A, dated January 25, 2010.

(2) For airplanes having serial numbers 224 through 231 inclusive: Do the actions in paragraphs (g)(2)(i) and (g)(2)(ii).

(i) Replace nuts having P/N MS–21042L3 at the location specified in Step 8.H. of the Accomplishment Instructions of Gulfstream Service Bulletin 200–51–366, dated March 30, 2010, including Appendix A: Israel Aircraft Industries Document IS951400E, Radiographic Inspection of Self-Locking Nut P/N MS21042L3, Revision A, dated January 25, 2010.

(ii) Do a radiographic inspection for cracking of nuts having P/N MS–21042L3 at the location specified in Step 8.J. of the Accomplishment Instructions of Gulfstream Service Bulletin 200–51–366, dated March 30, 2010, including Appendix A: Israel Aircraft Industries Document IS951400E, Radiographic Inspection of Self-Locking Nut P/N MS21042L3, Revision A, dated January 25, 2010. Before further flight replace all cracked nuts.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(i) Refer to MCAI Civil Aviation Authority of Israel (CAAI) Airworthiness Directive 57–10–06–18, dated July 27, 2010; and Gulfstream Service Bulletin 200–51–366, dated March 30, 2010, including Appendix A: Israel Aircraft Industries Document IS951400E, Radiographic Inspection of Self-Locking Nut P/N MS21042L3, Revision A, dated January 25, 2010; for related information.

Issued in Renton, Washington, on June 21, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–16314 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0648; Directorate Identifier 2010–NM–276–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Seven cases of on-ground hydraulic accumulator screw cap/end cap failure have been experienced on CL–600–2B19 aeroplanes, resulting in the loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. * * *

* * * * *

A detailed analysis of the calculated line of trajectory of a failed screw cap/end cap for each of the accumulators has been conducted, resulting in the identification of several areas where systems and/or structural components could potentially be damaged. Although all of the failures to date have occurred on the ground, an in-flight failure affecting such components could potentially have an adverse effect on the controllability of the aeroplane.

* * * * *

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

DATES: We must receive comments on this proposed AD by August 15, 2011.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Christopher Alfano, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0648; Directorate Identifier 2010–NM–276–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On October 7, 2010, we issued AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010). That AD required actions intended to address an unsafe condition on Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.

Since we issued AD 2010–22–02, we have determined that further rulemaking is necessary. While AD 2010–22–02 did not require the removal of the hydraulic system No. 3 accumulator, or replacement of the hydraulic system No. 1, inboard brake, and outboard brake accumulators, as specified in Part IV and Part VII of the Canadian Airworthiness Directive CF–2010–24, dated August 3, 2010, this NPRM proposes to require those actions. Also, for airplanes on which Bombardier Service Bulletin 601R–29–035, dated May 11, 2010, is done and reducer having part number MS21916D8–6 installed, this NPRM proposes to require replacing the reducer with a new reducer. We have coordinated with Transport Canada Civil Aviation (TCCA) on this issue.

Relevant Service Information

Bombardier has issued Service Bulletin 601R–29–035, Revision A; and Service Bulletin 601R–32–107, Revision B; both dated December 8, 2010. The actions described in this service information as outlined in the ''Discussion'' section above, are intended to correct the unsafe condition identified in the MCAI.

Change to Existing AD

This proposed AD would retain all requirements of AD 2010–22–02. Since AD 2010–22–02 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2010–22–02	Corresponding requirement in this proposed AD
paragraph (j)	paragraph (o)
paragraph (k)	paragraph (j)
paragraph (l)	paragraph (k)
paragraph (m)	paragraph (p)
paragraph (n)	paragraph (l)
paragraph (o)	paragraph (m)
paragraph (p)	paragraph (r)
paragraph (q)	paragraph (n)
paragraph (r)	paragraph (s)

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 605 products of U.S. registry.

The actions that are required by AD 2010–22–02 and retained in this proposed AD take about 19 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $1,615 per product.

We estimate that it would take about 14 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $3,054 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,567,620, or $4,244 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–16481 (75 FR 64636, October 20, 2010) and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2011–0648; Directorate Identifier 2010–NM–276–AD.

Comments Due Date

(a) We must receive comments by August 15, 2011.

Affected ADs

(b) This AD supersedes AD 2010–22–02, Amendment 39–16481.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 29 and 32: Hydraulic Power and Landing Gear, respectively.

Reason

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

Seven cases of on-ground hydraulic accumulator screw cap/end cap failure have been experienced on CL–600–2B19 aeroplanes, resulting in the loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. * * *

* * * * *

A detailed analysis of the calculated line of trajectory of a failed screw cap/end cap for each of the accumulators has been conducted, resulting in the identification of several areas where systems and/or structural components could potentially be damaged. Although all of the failures to date have occurred on the ground, an in-flight failure affecting such components could potentially have an adverse effect on the controllability of the aeroplane.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2010–22–02, With Revised Service Information

Airplane Flight Manual (AFM) Revision

(g) Within 30 days after November 4, 2010 (the effective date of AD 2010–22–02), revise the Limitations section, Normal Procedures section, and Abnormal Procedures section of the AFM by incorporating Canadair Regional Jet Temporary Revision (TR) RJ/186–1, dated August 24, 2010, into the applicable section of Canadair Regional Jet AFM, CSP A–012. Thereafter, except as provided by paragraph (t) of this AD, no alternative actions specified in Canadair Regional Jet TR RJ/186–1, dated August 24, 2010, may be approved.

Note 1: The actions required by paragraph (g) of this AD may be done by inserting a copy of Canadair Regional Jet TR RJ/186–1, dated August 24, 2010, into the applicable section of the Canadair Regional Jet AFM, CSP A–012. When this TR has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and this TR removed, provided that the relevant information in the general revision is identical to that in Canadair Regional Jet TR RJ/186–1, dated August 24, 2010.

Deactivation of the Hydraulic System No. 3 Accumulator

(h) Within 250 flight cycles after November 4, 2010, deactivate the hydraulic system No. 3 accumulator, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009. Doing the removal of the hydraulic system No. 3 accumulator in paragraph (o) of this AD is an alternate method of compliance with the requirements of this paragraph. The actions in this paragraph apply to all accumulators in hydraulic system No. 3.

Removal of the Hydraulic System No. 2 Accumulator

(i) Within 500 flight cycles after November 4, 2010, remove the hydraulic system No. 2 accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–29–032, Revision A, dated January 26, 2010. The actions in this paragraph apply to all accumulators in hydraulic system No. 2.

Initial and Repetitive Ultrasonic Inspection of Hydraulic System No. 1, Inboard Brake, and Outboard Brake Accumulators

(j) For hydraulic system No. 1, inboard brake, and outboard brake accumulators having P/N 601R75138–1 (08–60163–001 or 08–60163–002): At the applicable compliance times specified in paragraph (l) of this AD, do the inspections required by paragraphs (j)(1) and (j)(2) of this AD. Repeat the inspections for each accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002) thereafter at intervals not to exceed 500 flight cycles until the replacement specified in this paragraph is done or the replacement specified in paragraph (p) of this AD is done. If any crack is found, before further flight, replace the accumulator with a new accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002) and having the letter ''T'' after the serial number on the identification plate, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in table 1 or table 2 of this AD.

(1) Do an ultrasonic inspection for cracks on each accumulator, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin identified in table 1 of this AD.

TABLE 1—BOMBARDIER SERVICE INFORMATION FOR ACCUMULATOR INSPECTION

Accumulator	Document	Revision	Date
Hydraulic System No. 1	Bombardier Alert Service Bulletin A601R–29–029, including Appendix A, dated October 18, 2007.	B	May 11, 2010.
Inboard and Outboard Brake	Bombardier Alert Service Bulletin A601R–32–103, including Appendix A, Revision A, dated October 18, 2007.	D	May 11, 2010.

(2) Do an ultrasonic inspection for cracks on the screw cap, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in table 2 of this AD.

TABLE 2—BOMBARDIER SERVICE INFORMATION FOR SCREW CAP INSPECTION

Accumulator	Document	Revision	Date
Hydraulic System No. 1	Bombardier Service Bulletin 601R–29–033, including Appendix A, dated May 5, 2009.	A	May 11, 2010.
Inboard and Outboard Brake	Bombardier Service Bulletin 601R–32–106, including Appendix A	A	May 11, 2010.

(k) For hydraulic system No. 1, inboard brake, and outboard brake accumulators having P/N 601R75138–1 (08–60163–001 or 08–60163–002): Do the inspections specified in paragraph (j) of this AD at the applicable time in paragraph (k)(1), (k)(2), and (k)(3) of this AD.

(1) For any accumulator not having the letter ''T'' after the serial number on the identification plate and with more than 4,500 flight cycles on the accumulator as of November 4, 2010: Inspect within 500 flight cycles after November 4, 2010.

(2) For any accumulator not having the letter ''T'' after the serial number on the identification plate and with 4,500 flight cycles or less on the accumulator as of November 4, 2010: Inspect prior to the accumulation of 5,000 flight cycles on the accumulator.

(3) If it is not possible to determine the flight cycles accumulated for any accumulator not having the letter ''T'' after the serial number on the identification plate: Inspect within 500 flight cycles after November 4, 2010.

Note 2: For any accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002) and the letter ''T'' after the serial number on the identification plate, or if the accumulator P/N is not listed in paragraph (j) of this AD, the inspection specified in paragraph (j) of this AD is not required.

Credit for Actions Accomplished in Accordance With Previous Service Information

(l) Deactivating the hydraulic system No. 3 accumulator before November 4, 2010, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–29–031, dated December 23, 2008, is acceptable for compliance with the requirements of paragraph (h) of this AD.

(m) Removing the hydraulic system No. 2 accumulator in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–29–032, dated November 12, 2009, before November 4, 2010, is acceptable for compliance with the requirements of paragraph (i) of this AD.

(n) An ultrasonic inspection for cracks done before November 4, 2010, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin identified in table 3 of this AD, or the Accomplishment Instructions of the applicable service bulletin identified in table 4 of this AD, is acceptable for compliance

with the corresponding ultrasonic inspection required by paragraph (j) of this AD.

TABLE 3—BOMBARDIER CREDIT SERVICE INFORMATION FOR ACCUMULATOR INSPECTION

Document	Revision	Date
Bombardier Alert Service Bulletin A601R–29–029	Original	October 18, 2007.
Bombardier Alert Service Bulletin A601R–29–029	A	November 12, 2009.
Bombardier Alert Service Bulletin A601R–32–103	Original	November 21, 2006.
Bombardier Alert Service Bulletin A601R–32–103	A	March 7, 2007.
Bombardier Alert Service Bulletin A601R–32–103	B	October 18, 2007.
Bombardier Alert Service Bulletin A601R–32–103	C	February 26, 2009.

TABLE 4—BOMBARDIER CREDIT SERVICE INFORMATION FOR SCREW CAP INSPECTION

Document	Revision	Date
Bombardier Service Bulletin 601R–29–033	Original	May 5, 2009.
Bombardier Service Bulletin 601R–32–106	Original	May 5, 2009.

New Requirements of This AD

Removal of the Hydraulic System No. 3 Accumulator

(o) Within 1,000 flight cycles after the effective date of this AD, remove the hydraulic system No. 3 accumulator, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009. Doing the action in this paragraph terminates the requirements of paragraph (h) of this AD.

Replacement of the Hydraulic System No. 1, Inboard Brake, and Outboard Brake Accumulators

(p) Within 4,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first, replace any hydraulic system No. 1, inboard brake, or outboard brake accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002), with a new accumulator having P/N 601R75139–1 (11093–4), in accordance with the Accomplishment Instructions of the applicable service bulletin identified in table 5 of this AD. Doing the action in this paragraph terminates the requirement for the inspections in paragraph (j) of this AD for that accumulator. As of the effective date of this AD, use only Bombardier Service Bulletin 601R–29–035, Revision A; or 601R–32–107, Revision B; both dated December 8, 2010; as applicable.

TABLE 5—BOMBARDIER SERVICE INFORMATION FOR ACCUMULATOR REPLACEMENT

Accumulator	Document	Revision	Date
Hydraulic System No. 1	Bombardier Service Bulletin 601R–29–035	Original	May 11, 2010.
Hydraulic System No. 1	Bombardier Service Bulletin 601R–29–035	A	December 8, 2010.
Inboard and Outboard Brake	Bombardier Service Bulletin 601R–32–107	A	June 17, 2010.
Inboard and Outboard Brake	Bombardier Service Bulletin 601R–32–107	B	December 8, 2010.

Action for Airplanes on Which Bombardier Service Bulletin 601R–29–035, Dated May 11, 2010 Is Done and Reducer Having P/N MS21916D8–6 Is Installed

(q) For airplanes on which Bombardier Service Bulletin 601R–29–035, dated May 11, 2010, is done, and reducer having P/N MS21916D8–6 is installed: Within 1,200 flight cycles or 8 months after the effective date of this AD, replace the reducer of the hydraulic system No. 1 with a new reducer in accordance with Part B of Bombardier Service Bulletin 601R–29–035, Revision A, dated December 8, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(r) Removing the hydraulic system No. 3 accumulator in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin A601R–29–031, dated December 23, 2008, before November 4, 2010, is acceptable for compliance with the requirements of paragraph (o) of this AD.

(s) Replacing any hydraulic system No. 1, inboard brake, or outboard brake accumulator before November 4, 2010, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–107, dated May 11, 2010, is acceptable for compliance with the corresponding requirements of paragraph (p) of this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: The actions specified in Canadian Airworthiness Directive CF–2010–24, dated August 3, 2010, apply only to Tactair accumulators. The actions required by paragraphs (h), (i), and (o) of this AD apply to all accumulators in the positions specified in paragraphs (h), (i), and (o) of this AD.

Note 4: While Canadian Airworthiness Directive CF–2010–24, dated August 3, 2010, does not require replacement of the reducer of the hydraulic system No. 1 with a new reducer, paragraph (q) of this AD does.

Other FAA AD Provisions

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

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

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

Related Information

(u) Refer to MCAI Canadian Airworthiness Directive CF–2010–24, dated August 3, 2010; Canadair Regional Jet Temporary Revision RJ/186–1, dated August 24, 2010 to the Canadair Regional Jet Airplane Flight

Manual, CSP A–012; and the service bulletins listed in table 6 of this AD; for related information.

TABLE 6—RELATED SERVICE INFORMATION

Document	Revision	Date
Bombardier Alert Service Bulletin A601R–29–029	B	May 11, 2010.
Bombardier Alert Service Bulletin A601R–29–031	A	March 26, 2009.
Bombardier Alert Service Bulletin A601R–32–103	D	May 11, 2010.
Bombardier Service Bulletin 601R–29–032	A	January 26, 2010.
Bombardier Service Bulletin 601R–29–033	A	May 11, 2010.
Bombardier Service Bulletin 601R–29–035	A	December 8, 2010.
Bombardier Service Bulletin 601R–32–106	A	May 11, 2010.
Bombardier Service Bulletin 601R–32–107	B	December 8, 2010.

Issued in Renton, Washington, on June 16, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–16365 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0647; Directorate Identifier 2010–NM–193–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes) and A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Surface defects were visually detected on the rudder of an Airbus A319 and an A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were the result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A310 and A300–600 aeroplanes.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

* * * * *

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

DATES: We must receive comments on this proposed AD by August 15, 2011.

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

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

For service information identified in this proposed AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0647; Directorate Identifier 2010–NM–193–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0144, dated July 16, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Surface defects were visually detected on the rudder of an Airbus A319 and an A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation

confirmed that the defects were the result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A310 and A300–600 aeroplanes.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

To address this unsafe condition EASA issued AD 2010–0002 [which corresponds to FAA AD 2010–16–13, amendment 39–16390], superseding [EASA] AD 2009–0166, to require inspections of specific areas and, depending on findings, the application of corrective actions for those rudders where production reworks have been identified.

This new [EASA] AD addresses the rudder population that has also been reworked in production, but not included in the applicability of EASA AD 2010–0002.

The required actions, for certain rudders, include vacuum loss inspections and elasticity laminate checker inspections for defects including de-bonding between the skin and honeycomb core of the rudder. The corrective action is contacting the FAA or EASA for repair instructions if any defects are found. For certain other rudders, the required actions include replacing the rudder with a serviceable rudder. We are considering similar rulemaking action on Model A319 and A321 airplanes. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A310–55–2049 and A300–55–6048, both dated March 16, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 215 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $73,100, or $340 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2011–0647; Directorate Identifier 2010–NM–193–AD.

Comments Due Date

(a) We must receive comments by August 15, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category; equipped with carbon fiber reinforced plastic rudders having any part number and serial number listed in Table 1, 2, 3, or 4 of this AD.

TABLE 1—RUDDER INFORMATION

Rudder part No.	Affected rudder serial No.
A554–71710–000–00	TS–2010
A554–71710–000–00	TS–2027
A554–71710–000–00	TS–2030
A554–71710–002–00	TS–2043
A554–71710–004–00	TS–2048

TABLE 2—RUDDER INFORMATION

Rudder part No.	Affected rudder serial No.
MSN—scrapped	TS–1362
A554–71710–000–00	TS–2006
A554–71710–000–00	TS–2008
A554–71710–002–00	TS–2033
A554–71710–004–00	TS–2054
A554–71710–004–00	TS–2061
A554–71710–004–00	TS–2071
A554–71710–004–00	TS–2072
A554–71710–004–00	TS–2073
A554–71730–000–00–0000	TS–2082
A554–71730–000–00–0000	TS–2084
A554–71730–000–00–0000	TS–2085
A554–71730–000–00–0000	TS–2086
A554–71730–000–00–0000	TS–2087

TABLE 3—RUDDER INFORMATION

Rudder part No.	Affected rudder serial No.
A554–71500–016–30	HF–1254
A554–71710–004–00	TS–2049
A554–71710–004–00	TS–2055
A554–71710–004–00	TS–2059

TABLE 4—RUDDER INFORMATION

Rudder part No.	Affected rudder serial No.
A554–71500–016–91	HF–1044
A554–71500–014–00	HF–1116
A554–71500–016–00	HF–1183
A554–71500–016–00	HF–1184
A554–71500–026–00	TS–1402

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

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

Surface defects were visually detected on the rudder of an Airbus A319 and an A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were the result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A310 and A300–600 aeroplanes.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

* * * * *

Compliance

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

Inspections and Corrective Actions for Rudders Identified in Tables 1, 2, and 3

(g) For rudders identified in Table 1 or Table 2 of this AD: Do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, and paragraphs (g)(3) and (g)(4) of this AD, at the time specified. Do the actions in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 (for Model A310 series airplanes) or A300–55–6048 (for Model A300–600 series airplanes), both dated March 16, 2010.

(1) For rudders identified in Table 1 of this AD: Within 8 months after the effective date of this AD, perform a vacuum loss inspection in the ''area 1'' location defined in Airbus Mandatory Service Bulletin A310–55–2049 or A300–55–6048, both dated March 16, 2010, as applicable, to detect defects, including de-bonding.

(2) For rudders identified in Table 2 of this AD: Within 24 months after the effective date of this AD, perform a vacuum loss inspection in the ''area 1'' location defined in Airbus Mandatory Service Bulletin A310–55–2049 or A300–55–6048, both dated March 16, 2010, as applicable, to detect defects, including de-bonding.

(3) Within 24 months after the effective date of this AD: Do an elasticity laminate checker inspection to detect defects, including de-bonding, in the trailing edge location.

(4) Repeat the inspection required by paragraph (g)(3) of this AD two times at intervals not to exceed 4,500 flight cycles, but not fewer than 4,000 flight cycles from the most recent inspection.

(h) For rudders identified in Table 3 of this AD: Do the actions specified in paragraphs (h)(1) and (h)(2) of this AD at the time specified. Do the actions in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 (for Model A310 series airplanes) or A300–55–6048 (for Model A300–600 series airplanes), both dated March 16, 2010.

(1) Within 4,500 flight cycles after the effective date of this AD, but not fewer than 4,000 flight cycles from the most recent elasticity laminate checker inspection: Do an elasticity laminate checker inspection to detect defects, including de-bonding, in the trailing edge location.

(2) Repeat the inspection required by paragraph (h)(1) of this AD one time within 4,500 flight cycles, but not fewer than 4,000 flight cycles from the last inspection.

(i) If any defect is found during any inspection required by paragraphs (g) and (h) of this AD, before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent).

(j) If no defect is found during the inspections required by paragraphs (g)(1) and (g)(2) of this AD, before further flight, restore the vacuum loss holes with the temporary restoration with self adhesive tape, temporary restoration with resin, or permanent restoration with resin and surface protection. Do the applicable actions specified in paragraph (j)(1) or (j)(2) of this AD.

(1) For airplanes on which a temporary restoration with self-adhesive disks or tapes is done, within 4 months after doing the restoration, do a detailed inspection for loose or missing self-adhesive disks or tapes and repeat the inspection thereafter at intervals not to exceed 4 months until the permanent restoration is done, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 (for Model A310 series airplanes) or A300–55–6048 (for Model A300–600 series airplanes), both dated March 16, 2010. If any loose or missing self-adhesive disks or tapes are found during any inspection required by this AD, before further flight, close the holes, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 or A300–55–6048, both dated March 16, 2010, as applicable. Do the permanent restoration within 4,500 flight cycles after doing the temporary restoration, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 or A300–55–6048, both dated March 16, 2010, as applicable.

(2) For airplanes on which a temporary restoration with resin is done: Within 4,500 flight cycles after doing the temporary restoration do the permanent restoration, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 (for Model A310 series airplanes) or A300–55–6048 (for Model A300–600 series airplanes), both dated March 16, 2010.

Reporting

(k) At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD: Report the results of each inspection required by paragraphs (g) and (h) of this AD, including no findings, to Airbus, as specified in Airbus Mandatory Service Bulletin A310–55–2049 (for Model A310 series airplanes) or A300–55–6048 (for Model A300–600 series airplanes), both dated March 16, 2010.

(1) Inspections done before the effective date of this AD: Within 30 days after the effective date of this AD.

(2) Inspections done on or after the effective date of this AD: Within 30 days after accomplishment of the inspection.

Replacement for Rudders Identified in Table 4

(l) For rudders identified in Table 4 of this AD: Within 8 months after the effective date of this AD, replace the affected rudder with a serviceable unit, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the EASA (or its delegated agent).

Parts Installation

(m) As of the effective date of this AD, no person may install any rudder identified in Table 1, 2, or 3 of this AD on any airplane, unless the rudder has been inspected and all applicable corrective actions have been done in accordance with paragraphs (g), (h), and (i) of this AD, as applicable.

(n) As of the effective date of this AD, no person may install any rudder identified in Table 4 of this AD on any airplane.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(p) Refer to MCAI EASA Airworthiness Directive 2010–0144, dated July 16, 2010; and Airbus Mandatory Service Bulletins A310–55–2049 and A300–55–6048, both dated March 16, 2010; for related information.

Issued in Renton, Washington, on June 16, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–16367 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0644; Directorate Identifier 2010–NM–265–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require repetitive detailed inspection and high frequency eddy current (HFEC) inspections for cracks of the wing center section (WCS) spanwise beams, and repair if necessary. This proposed AD was prompted by reports of cracks found in the web pockets of the WCS spanwise beams. We are proposing this AD to detect and correct cracking in the WCS spanwise beams, which could result in reduced structural integrity of the wings.

DATES: We must receive comments on this proposed AD by August 15, 2011.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* (425) 917–6452; *Fax:* (425) 917–6590; *e-mail: duong.tran@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0644; Directorate Identifier 2010–NM–265–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of cracking in the wing center section (WSC) spanwise beams. Two operators reported finding a crack in the web pockets of WCS spanwise beams on two airplanes. In the first report, metallurgical testing showed the cracks were the result of fatigue from reverse bending (diagonal tension buckling).

If cracking at multiple locations occurs in multiple spanwise beams, the WCS spanwise beams might not be able

to carry design loads. This could result in the loss of the WCS load path. We are proposing this AD to detect and correct cracking in the WCS spanwise beams, which could result in reduced structural integrity of the wings.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 777–57A0087, dated November 11, 2010. Boeing Alert Service Bulletin 777–57A0087, dated November 11, 2010 describes procedures for a detailed inspection and high frequency eddy current (HFEC) inspection for cracks in the WCS web pockets of spanwise beams numbers 1, 2, and 3; a detailed inspection for cracks of any previously installed repairs; and repair including doing a related investigation action and all applicable corrective actions, if necessary. Boeing Alert Service Bulletin 777–57A0087, dated November 11, 2010 also describes methods for repairing cracking by following procedures in Appendix A, B, or C or by contacting Boeing for repair instructions, depending on the size and location of the crack. The related investigative action is doing a HFEC inspection for cracking around the edge of the cutout, for which the corrective action is contacting Boeing.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Although Boeing Alert Service Bulletin 777–57A0087, dated November 11, 2010, specifies to contact the manufacturer for instructions on how to repair certain conditions, this proposed AD would require repairing those conditions in one of the following ways:

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

Costs of Compliance

We estimate that this proposed AD affects 160 airplanes of U.S. registry and 920 airplanes of international registry (including domestic).

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection and high frequency eddy current inspection of spanwise beams.	50 work-hours × $85 per hour = $4,250 per inspection cycle.	$0	$4,250 per inspection cycle	$680,000 = 160 airplanes × $4,250 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition repair actions specified in this proposed AD. We have no way of determining the number of aircraft that might need these repairs.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0644; Directorate Identifier 2010–NM–265–AD.

Comments Due Date

(a) We must receive comments by August 15, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in

Boeing Alert Service Bulletin 777–57A0087, dated November 11, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD was prompted by reports of cracks found in the web pockets of the wing center section spanwise beams. We are issuing this AD to detect and correct cracking in the WCS spanwise beams, which could result in reduced structural integrity of the wings.

Compliance

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

Repetitive Inspections and Corrective Actions

(g) At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, do a detailed inspection and a high frequency eddy current inspection for cracks of the web pockets of the WCS spanwise beams numbers 1, 2, and 3; and a detailed inspection for cracks of any previously installed repairs; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0087, dated November 11, 2010. Repeat the inspections thereafter at intervals not to exceed 8,000 flight cycles.

(1) Before the accumulation of 8,000 total flight cycles.

(2) Within 6,000 flight cycles, or 1,125 days, after the effective date of this AD, whichever occurs first.

(h) If any cracking is found during any inspection required by paragraph (g) of this AD, before further flight, repair the crack, including related investigative actions and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0087, dated November 11, 2010; except where Boeing Alert Service Bulletin 777–57A0087, dated November 11, 2010, specifies to contact Boeing for repair instructions, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

Related Information

(j) For more information about this AD, contact Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* (425) 917–6452; *fax:* (425) 917–6590; *e-mail: duong.tran@faa.gov.*

(k) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 17, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–16368 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0645; Directorate Identifier 2010–NM–009–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Model 747 series airplanes. The existing AD currently requires repetitive inspections for cracks of the fuselage skin lap splice between body station (BS) 400 and BS 520 at stringers S–6L and S–6R, and repair if necessary. This proposed AD would shorten the interval for the repetitive inspections, require modification for certain airplanes, and require certain post-modification inspections for other airplanes. This proposed AD results from reports of multiple adjacent cracks on an airplane, and a recent fleet-wide evaluation of widespread fatigue damage of skin lap joints, which indicated the need for revised procedures and reduced compliance times. We are proposing this AD to detect and correct cracking of the fuselage skin lap splice between BS 400 and BS 520 at stringers S–6L and S–6R. Such cracking could result in sudden loss of cabin pressurization and the inability of the fuselage to withstand fail-safe loads.

DATES: We must receive comments on this proposed AD by August 15, 2011.

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

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

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

Examining the AD Docket

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

ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6432; fax 425–917–6590; *e-mail: bill.ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0645; Directorate Identifier 2010–NM–009–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On October 1, 1990, we issued AD 90–21–17, amendment 39–6768 (55 FR 41510, October 12, 1990), for certain Model 747 series airplanes. That AD requires inspection of the fuselage skin lap splice between body station (BS) 400 and BS 520 at stringers (S) 6L or S–6R, and repair if necessary. That AD resulted from reports of multiple adjacent cracks on one airplane. We issued that AD to detect and correct such cracking, which could result in sudden loss of cabin pressurization and the inability of the airplane fuselage to withstand fail-safe loads.

Actions Since Existing AD Was Issued

Since we issued AD 90–21–17, Boeing performed a fleet-wide evaluation of the Model 747 skin lap joints for widespread fatigue damage (WFD) and concluded that the existing repetitive interval of both the pre- and post-modification inspections needs to be reduced to preclude WFD. In addition, Boeing has determined that one of the existing modification options, which allow installation of protruding head fasteners without external reinforcement, does not provide adequate durability for WFD and must be prohibited, and all previously accomplished modifications that are inadequately reinforced (i.e., lap joints that have no external reinforcement or are only partially reinforced) must be reworked.

Relevant Service Information

The appropriate source of service information for the required actions in AD 90–21–17 is Boeing Alert Service Bulletin 747–53A2303, dated June 2, 1988; and Revision 1, dated March 29, 1990. Boeing has since issued Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009, which does the following:

- Shortens the interval for repetitive inspections from 5,000 to 3,000 flight cycles, with a grace period of 1,000 flight cycles after the date on Revision 2 of the service bulletin.
- Adds installation of reinforcing doublers to the upper and lower skin of the lap splice for certain modified airplanes.
- Adds post-modification inspections which are internal and external high-frequency eddy current inspections for cracking in the area of the modification.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 90–21–17, retain its requirements, and require accomplishing the actions specified in Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009, described previously.

Changes to Existing AD

We have made the following changes to the existing AD:

1. Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA). We have revised paragraph (p) in this proposed AD to add delegation of authority to Boeing Commercial Airplanes ODA to approve an alternative method of compliance for any repair required by this AD.

2. Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009, specifies contacting the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

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

3. Paragraph A. of AD 90–21–17 specifies doing a ''close visual'' inspection. We have revised that paragraph (paragraph (g) in this NPRM) to also refer to a ''detailed inspection'' to correspond to the terminology used in Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009. New Note 1 in this NPRM defines a detailed inspection.

4. This proposed AD would retain the requirements of AD 90–21–17. Since that AD was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 90–21–17	Corresponding requirement in this proposed AD
paragraph A	paragraph (g)
paragraph B	paragraph (h)
paragraph C	paragraph (i)
paragraph D	paragraph (j)
paragraph E	paragraph (k)

Costs of Compliance

There are about 165 airplanes of the affected design in the worldwide fleet; of these, 64 are U.S.-registered airplanes. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspection (required by AD 90–21–17).	8	$85	$0	$680 per inspection cycle.	$43,520 per inspection cycle.

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Modification (new proposed action).	Up to 370	85	Between $954 and $2,064.	Up to $33,514	Up to $2,144,896.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–6768 (55 FR 41510, October 12, 1990) and adding the following new AD:

The Boeing Company: Docket No. FAA–2010–0645; Directorate Identifier 2010–NM–009–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 15, 2011.

Affected ADs

(b) This AD supersedes AD 90–21–17, Amendment 39–6768.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from reports of multiple adjacent cracks on an airplane, and a recent fleet-wide evaluation of widespread fatigue damage of skin lap joints, which indicated the need for revised procedures and reduced compliance times. The Federal Aviation Administration is issuing this AD to detect and correct cracking of the fuselage skin lap splice between body station (BS) 400 and BS 520, at stringers S–6L and S–6R. Such cracking could result in sudden loss of cabin pressurization and the inability of the fuselage to withstand fail-safe loads.

Compliance

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

Restatement of Requirements of AD 90–21–17, Amendment 39–6768, With Revised Service Information, Reduced Inspection Interval, and Added Note

Inspection

(g) Conduct a close visual or detailed inspection, and a high frequency eddy current (HFEC) inspection, of the fuselage skin lap splice between BS 400 and BS 520, at stringers S–6L and S–6R, for cracking, in accordance with Boeing Alert Service Bulletin 747–53A2303, dated June 2, 1988; Revision 1, dated March 29, 1990; or Revision 2, dated October 1, 2009; at the times specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. After the effective date of this AD, only Revision 2 may be used. Adequate lighting must be used for this inspection. The eddy current inspections may be conducted without removal of the paint, provided the paint does not interfere with the inspections. Paint must be removed, using an approved chemical stripper, in any situation where the inspector determines that the paint is interfering with the proper functioning of the inspection instrument.

(1) Within the next 100 landings after March 31, 1989 (the effective date of Amendment 39–6146, AD 89–05–03, which was superseded by AD 90–21–17), for airplanes that have accumulated 16,000 or more landings as of March 31, 1989, unless previously accomplished within the last 4,900 landings.

(2) Within the next 1,000 landings after March 31, 1989, or prior to the accumulation of 16,000 landings, whichever occurs first, for airplanes that have accumulated between 12,000 and 16,000 landings, as of March 31, 1989, unless previously accomplished within the last 4,000 landings.

(3) Prior to the accumulation of 13,000 landings for airplanes that have accumulated 12,000 or fewer landings as of March 31, 1989, unless previously accomplished within the last 5,000 landings.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(h) On airplanes which have been modified to the stretched-upper-deck configuration, as identified in Boeing Alert Service Bulletin 747–53A2303, dated June 2, 1988; or Revision 1, dated March 29, 1990; or Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009; the accumulated landing threshold for compliance with

paragraph (g) of this AD is measured from the time of the stretched-upper-deck modification.

(i) If no cracking is detected during the inspections required by paragraph (g) of this AD, repeat the inspections required by paragraph (g) of this AD one time at the earlier of the times specified in paragraphs (i)(1) and (i)(2) of this AD. Thereafter repeat the inspections at intervals not to exceed 3,000 landings.

(1) Within 5,000 landings after the last inspection.

(2) Within 3,000 landings after the last inspection, or within 1,000 landings after the effective date of this AD, whichever occurs later.

(j) If cracks are detected during the inspections required by paragraph (g) of this AD, accomplish the repair or preventive modification of the affected lap splice, in accordance with Boeing Alert Service Bulletin 747–53A2303, dated June 2, 1988; or Revision 1, dated March 29, 1990; or Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009; prior to further pressurized flight. After the effective date of this AD, only Revision 2 may be used. If cracks are repaired in local areas without accomplishing preventive modification of the entire affected lap area, continue inspections of the unmodified and unrepaired areas of the affected lap splice in accordance with paragraph (i) of this AD.

(k) For airplanes incorporating the preventive modification, as described in Boeing Alert Service Bulletin 747–53A2303, dated June 2, 1988; or Revision 1, dated March 29, 1990; or Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009; accomplish the inspections required by paragraph (g) of this AD prior to the accumulation of 10,000 landings after the modification and thereafter at intervals not to exceed 5,000 landings. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further pressurized flight.

New Requirements of This AD

Post-Modification Inspections

(l) For airplanes on which a protruding head fastener modification has been done in accordance with Boeing Alert Service Bulletin 747–53A2303, dated June 2, 1988; or Revision 1, dated March 29, 1990: Within 10,000 flight cycles after modification, or within 500 flight cycles after the effective date of this AD, whichever occurs later, do an external HFEC inspection for cracking in the skin around the fasteners in the upper row of the lap joint, in accordance with Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009 (''the service bulletin''). If any crack is found, before further flight repair in accordance with the service bulletin (except as required by paragraph (o) of this AD), or do the modification specified in paragraph (n) of this AD. Repeat the inspection in affected uncracked areas at intervals not to exceed 500 flight cycles, until the modification specified in paragraph (n) of this AD is done.

(m) For airplanes on which an external doubler repair has been installed as a modification that was done in accordance with a method other than that specified in Boeing 747 SRM 53–30–03, Figure 19, 25, 28 or 34: Within 10,000 flight cycles after modification, or within 500 flight cycles after the effective date of this AD, whichever occurs later, do an internal HFEC inspection for cracking in the skin around the fasteners in the upper row of the lap joint, in accordance with Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009 (''the service bulletin''). If any crack is found, before further flight, repair in accordance with the service bulletin (except as required by paragraph (o) of this AD), or do the modification specified in paragraph (n) of this AD. Repeat the inspection in affected uncracked areas at intervals not to exceed 500 flight cycles, until the modification specified in paragraph (n) of this AD is done.

External Doubler Modification

(n) For airplanes on which no previous modification or repair has been installed in the affected area or on which a protruding head fastener modification or a Boeing 747 SRM 53–30–03 repair or modification has been installed that is not per Figure 19, 25, 28, or 34 of the Boeing 747 SRM for the full length of the lap splice: Within 14,000 flight cycles after the first repair or modification was done, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, modify the skin, and do all post-modification inspections and repairs, in accordance with Part 3 of Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009, except as required by paragraph (o) of this AD. Do the post-modification inspection within 10,000 flight cycles after installation of the modification. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles. All applicable repairs must be done before further flight.

Exception to Service Bulletin Specification

(o) Where Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with AD 90–21–17 are approved as AMOCs for the corresponding provisions of paragraphs (g) and (i) of this AD. AMOCs approved previously in accordance with AD 90–21–17 are approved as AMOCs for the corresponding provisions of paragraphs (j) and (n) of this AD only if the repair or preventive modification of the affected lap splice was done in accordance with Boeing Service Bulletin 747–53A2303, Revision 2, dated October 1, 2009 (''the service bulletin''), including Boeing Designated Engineering Representative (DER) or Airworthiness Representative (AR) approvals of deviations to Revision 2 of the service bulletin.

Related Information

(q) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6432; fax 425–917–6590; *e-mail: bill.ashforth@faa.gov.*

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

Issued in Renton, Washington, on June 17, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–16370 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2010–1001]

RIN 1625–AA00; 1625–AA08

Special Local Regulations and Safety Zones; Recurring Events in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to remove, add, and consolidate special local regulations and permanent safety zones in the Coast Guard Captain of the Port (COTP) New York Zone for annual recurring swim events, fireworks displays, and marine events (annual recurring events). When these special local regulations or safety zones are activated and subject to enforcement, this rule would restrict vessels from portions of water areas during these annual recurring events. The revised listing of special local regulations and safety zones would facilitate public notification of events and help protect the public and event participants from the hazards associated with these annual recurring events.

DATES: Comments and related material must be received by the Coast Guard on or before July 29, 2011. Requests for public meetings must be received by the Coast Guard on or before July 6, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1001 using any one of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LTJG Eunice James, Coast Guard; telephone (718) 354–4163, e-mail *Eunice.A.James@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage 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 have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–1001), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2010–1001'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2010–1001'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LTJG Eunice James at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1225, 1226, 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones and special local regulations.

Swim events, fireworks displays, and marine events are held on an annual recurring basis on the navigable waters within the COTP Port New York Zone. In the past, the Coast Guard has established special local regulations, regulated areas, and safety zones for these annual recurring events on a case by case basis to ensure the protection of the maritime public and event participants from the hazards associated with these events. The Coast Guard has not received public comments or concerns regarding the impact to waterway traffic from these annually recurring events.

This proposed rule will consistently apprise the public in a timely manner through permanent publication in Title

33 of the Code of Federal Regulations. The TABLES in this proposed regulation list each annual recurring event requiring a regulated area as administered by the Coast Guard.

By establishing a permanent regulation containing these annual recurring events, the Coast Guard would eliminate the need to establish temporary rules for events that occur on an annual basis, thereby, limiting the costs associated with cumulative regulations.

This rulemaking will remove, add, and consolidate regulations that better meet the Coast Guard's intended purpose of ensuring safety during these events.

Discussion of Proposed Rule

The Coast Guard proposes to add 33 CFR 100.150 and to consolidate sections 33 CFR 165.161, 165.162, 165.166, 165.168, 165.170 into a new section, 33 CFR 165.160. The proposed rule would apply to the annual recurring events listed in the attached TABLES in the COTP New York Zone. The TABLES provide the event name, and type, as well as locations of the events. The specific times, dates, regulated areas, and enforcement period for each event will be provided through the Local Notice to Mariners, Broadcast Notice to Mariners and online at *http://homeport.uscg.mil/newyork* or through a Notice of Enforcement published in the **Federal Register**.

During enforcement periods, the safety zones in TABLE 1 to § 165.160 will be enforced from 6 p.m. to 1 a.m. each day. The safety zone will be enforced at the locations listed in TABLE to § 165.160, when a barge with a ''FIREWORKS—STAY AWAY'' sign on the port and starboard side is on-scene or when a ''FIREWORKS—STAY AWAY'' sign is posted on land adjacent to the shoreline. Vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the COTP New York or the designated representative.

The particular size of the proposed safety zones established for each event will be reevaluated on an annual basis in accordance with Navigational and Vessel Inspection Circular (NVIC) 07–02, Marine Safety at Firework Displays, the National Fire Protection Association Standard 1123, Code for Fireworks Displays (30-yard distance per inch of diameter of the fireworks mortars), and other pertinent regulations and publications.

This proposed regulation would prevent vessels from transiting areas specifically designated as special local regulations or safety zones during the periods of enforcement to ensure the protection of the maritime public and event participants from the hazards associated with the listed annual recurring events. Only event sponsors, designated participants, and official patrol vessels will be allowed to enter regulated areas. Spectators and other vessels not registered as event participants may not enter the safety zones without the permission of the COTP or the designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons:

The Coast Guard has previously promulgated safety zones or special local regulations, in accordance with 33 CFR Parts 100 and 165, for all event areas contained within this proposed regulation and has not received notice of any negative impact caused by any of the safety zones or special local regulations. By establishing a permanent regulation containing all of these events, the Coast Guard will eliminate the need to establish individual temporary rules for each separate event that occurs on an annual basis, thereby limiting the costs of cumulative regulations.

Vessels will only be restricted from safety zones and special local regulation areas for a short duration of time. Vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas. Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners and, if possible, through a Notice of Enforcement in the Federal Register. No new or additional restrictions would be imposed on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: Owners or operators of vessels intending to transit, fish, or anchor in the areas where the listed annual recurring events are being held.

The proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels will only be restricted from safety zones and special local regulation areas for a short duration of time; vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas; the Coast Guard has promulgated safety zones or special local regulations in accordance with 33 CFR Parts 100 and 165 for all event areas in the past and has not received notice of any negative impact caused by any of the safety zones or special local regulations; notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners or through a Notice of Enforcement in the **Federal Register**. No new or additional restrictions would be imposed on vessel traffic.

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

Assistance for Small Entities

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

business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action appears to be one of a category of actions which do not individually or cumulatively have a significant effect on the human environment.

A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishment of safety zones for fireworks displays and swimming events as well as special local regulations for a power boat race. As such, it appears that this action will qualify for Coast Guard Categorical Exclusions (34) (g) and (h), respectively, as described in figure 2–1 of the Commandant Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a new § 100.150 to read as follows:

§ 100.150 Special Local Regulations; Marine Events in the Coast Guard Sector New York Captain of the Port Zone.

The following regulations apply to the marine events listed in the TABLE to § 100.150. These regulations will be enforced for the duration of each event, on or about the dates indicated. Annual notice of the exact dates and times of the effective period of the regulations with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in a Local Notices to Mariners and broadcast over VHF. First Coast Guard District Local Notice to Mariners can be found at: *http://www.navcen.uscg.gov/.* The Sector New York Marine Events

schedule can also be viewed electronically at *http://www.homeport.uscg.mil/newyork.* Although listed in the Code of Federal Regulations, sponsors of events listed in TABLE to § 100.150 are still required to submit marine event applications in accordance with 33 CFR 100.15.

(a) Definitions. The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(b) Vessel operators desiring to enter or operate within the regulated areas shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

(c) Vessels may not transit the regulated areas without the COTP or designated representative approval. Vessels permitted to transit must operate at a no wake speed, in a manner which will not endanger participants or other crafts in the event.

(d) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or designated representative.

(e) The COTP or designated representative may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(f) The COTP or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(g) For all power boat races listed, vessels not participating in this event, swimmers, and personal watercraft of any nature are prohibited from entering or moving within the regulated area unless authorized by the COTP or designated representative. Vessels within the regulated area must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event.

TABLE TO § 100.150

1.0	Hudson River
1.1 New York Super Boat Race	• Event type: Power Boat Race. • Date: The weekend after Labor Day. • Location: All waters of the Lower Hudson River south of a line drawn from the northwest corner of Pier 76 in Manhattan to a point on the New Jersey shore in Weehawken, New Jersey at approximate position 40°45′52″ N 074°01′01″ W (NAD 1983) and north of a line connecting the following points (all coordinates are NAD 1983): 40°42′16.0″ N, 074°01′09.0″ W; thence to 40°41′55.0″ N, 074°01′16.0″ W; thence to 40°41′47.0″ N, 074°01′36.0″ W; thence to 40°41′55.0″ N, 074°01′59.0″ W; thence to 40°42′20.5″ N, 074°02′06.0″ W.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1225, 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 33 CFR 1.05–1 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

4. Remove §§ 165.161, 165.162, 165.168 and 165.170 from 33 CFR part 165.

5. Add a new § 165.160 to read as follows:

§ 165.160 Safety Zones; Fireworks Displays and Swim Events in Coast Guard Captain of the Port New York Zone.

(a) Regulations. The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the fireworks displays and swim events listed in TABLES 1 and 2 to § 165.160.

These regulations will be enforced for the duration of each event. Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners or through a Notice of Enforcement in the **Federal Register** well in advance of the events. Mariners should consult the **Federal Register** or their Local Notice to Mariners to remain apprised of schedule or event changes. First Coast Guard District Local Notice to Mariners can be found at *http://www.navcen.uscg.gov/.* The Captain of the Port Sector New York Marine Events schedule can also be viewed electronically at *http://www.homeport.uscg.mil/newyork.* Although listed in the Code of Federal Regulations, sponsors of events listed in TABLES 1 and 2 to § 165.160 are still required to submit marine event applications in accordance with 33 CFR 100.15.

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(b) Vessel operators desiring to enter or operate within the regulated areas shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

(c) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or designated representative.

(d) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(e) The COTP or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(f) The regulated area for all fireworks displays listed in TABLE 1 to § 165.160 is that area of navigable waters within a 360 yard radius of the launch platform or launch site for each fireworks display, unless otherwise noted in TABLE 1 to § 165.160 or modified in USCG First District Local Notice to Mariners at: *http://www.navcen.uscg.gov/.*

(g) Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background. Shore sites used in these locations will display a sign labeled ''FIREWORKS—STAY AWAY'' with the same dimensions. These zones will be enforced from 6 p.m. (e.s.t.) to 1 a.m. (e.s.t.) each day a barge with a ''FIREWORKS—STAY AWAY'' sign on the port and starboard side is on-scene or a ''FIREWORKS—STAY AWAY'' sign is posted in a location listed in TABLE 1 to § 165.160.

(h) For all swim events listed in TABLE 2 to § 165.160, vessels not associated with the event shall maintain a separation of at least 100 yards from the participants.

TABLE 1 TO § 165.160

1.0	Hudson River
1.1 Macy's 4th of July Fireworks	• Event Type: Fireworks. • Date: July 4th with a rain date of July 5th. • Location: All waters of the Hudson River bounded by a line drawn east from approximate position 40°46′35.43″ N, 074°00′37.53″ W in New Jersey, to approximate position 40°46′16.98″ N, 073°59′52.34″ W in New York, thence south along the Manhattan shoreline to approximate position 40°44′48.98″ N, 074°00′41.06″ W, then west to approximate position 40°44′55.91″ N, 074°01′24.94″ W, (NAD 83). Then north along the New Jersey shoreline and back to the point of origin.
2.0	New York Harbor
2.1 Liberty Island Safety Zone	• Launch site: A barge located in approximate position 40°41′16.5″ N 074°02′23″ W (NAD 1983), located in Federal Anchorage 20–C, about 360 yards east of Liberty Island. This Safety Zone is a 360-yard radius from the barge.
2.2 Ellis Island Safety Zone	• Launch site: A barge located between Federal Anchorages 20–A and 20–B, in approximate position 40°41′45″ N 074°02′09″ W (NAD 1983) about 365 yards east of Ellis Island. This Safety Zone is a 360-yard radius from the barge.
2.3 South Ellis Island Safety Zone	• Launch site: A barge located in approximate position 40°41′39.9″ N 074°02′33.7″ W (NAD 1983), about 260 yards south of Ellis Island. This Safety Zone is a 240-yard radius from the barge.
2.4 South Beach, Staten Island Safety Zone	• Launch site: A barge located in approximate position 40°35′11″ N 074°03′42″ W (NAD 1983), about 350 yards east of South Beach, Staten Island. This Safety Zone is a 360-yard radius from the barge.
2.5 Raritan Bay Safety Zone	• Launch site: A barge located in approximate position 40°30′04″ N 074°15′35″ W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595). This Safety Zone is a 240-yard radius from the barge.
2.6 Coney Island Safety Zone	• Launch site: A land shoot from the south end of Steeplechase Pier, Coney Island in approximate position 40°34′11″ N 073°59′00″ W (NAD 1983). This Safety Zone is a 250-yard radius from the launch site.
2.7 Arthur Kill, Elizabeth, NJ Safety Zone	• Launch site: A land shoot located in Elizabeth, New Jersey in approximate position 40°38′50″ N 074°10′58″ W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780). This Safety Zone is a 150-yard radius from the launch site.
2.8 Rockaway Beach Safety Zone	• Launch site: A barge located in approximate position 40°34′28.2″ N 073°50′00″ W (NAD 1983), 350 yards off of Beach 116th Street. This Safety Zone is a 360-yard radius from the barge.
2.9 Rockaway Inlet Safety Zone	• Launch site: A barge located in approximate position 40°34′19.1″ N 073°54′43.5″ W (NAD 1983). 1200 yards south of Point Breeze. This Safety Zone is a 360-yard radius from the barge.

TABLE 1 TO § 165.160—Continued

2.10 Pierhead Channel, NJ Safety Zone	• Launch site: A barge located in approximate position 40°39′18.8″ N 074°04′39.1″ W (NAD 1983), approximately 350 yards north of the Kill Van Kull Channel. This Safety Zone is a 360-yard radius from the barge.
2.11 Midland Beach, Staten Island Safety Zone	• Launch site: A barge located in approximate position 40°34′12″ N 074°04′29.6″ W (NAD 1983), approximately 800 yards southeast of Midland Beach. This Safety Zone is a 500-yard radius from the barge.
2.12 Wolfes Pond Park, Staten Island Safety Zone	• Launch site: A barge located in approximate position 40°30′52.1″ N 074°10′58.8″ W (NAD 1983), approximately 540 yards east of Wolfe's Pond Park. This Safety Zone is a 500-yard radius from the barge.
2.13 Ocean Breeze Fishing Pier, Staten Island Safety Zone	• Launch site: A barge located in approximate position 40°34′46.3″ N 074°04′02.0″ W (NAD 1983), approximately 1150 yards west of Hoffman Island. This Safety Zone is a 360-yard radius from the barge.
2.14 Fort Hamilton Safety Zone	• Launch site: A barge located in approximate position 40°36′00″ N 074°01′42.5″ W (NAD 1983), approximately 1400 yards southeast of the Verrazano-Narrows Bridge. This Safety Zone is a 240-yard radius from the barge.
2.15 Liberty State Park Safety Zone	• Launch site: A barge located in approximate position 40°41′20.32″ N 074°03′29.35″ W (NAD 1983), approximately 334 yards south of Pier 7, Liberty State Park, Jersey City, New Jersey. This Safety Zone is a 240-yard radius from the barge.
2.16 Rumson, NJ, Safety Zone	• Launch site: A barge located in approximate position 40°22′39.1″ N 074°01′07.3″ W (NAD 1983), approximately 600 yards south of the Oceanic Bridge. This Safety Zone is a 300-yard radius from the barge.
2.17 Red Bank, NJ, Safety Zone	• Launch site: A barge located in approximate position 40°21′20″ N 074°04′10″ W (NAD 1983), approximately 360 yards northwest of Red Bank, NJ. This Safety Zone is a 240-yard radius from the barge.
3.0	Western Long Island Sound
3.1 Peningo Neck, Western Long Island Sound safety zone	• Launch site: A barge located in approximate position 40°56′21″ N 073°41′23″ W (NAD 1983), approximately 525 yards east of Milton Point, Peningo Neck, New York. This Safety Zone is a 300-yard radius from the barge.
3.2 Satans Toe, Western Long Island Sound Safety Zone	• Launch Site: A barge located in approximate position 40°55′21″ N 073°43′41″ W (NAD 1983), approximately 635 yards northeast of Larchmont Harbor (East Entrance) Light 2 (LLNR 25720). This Safety Zone is a 360-yard radius from the barge.
3.3 Larchmont, NY, Western Long Island Sound Safety Zone	• Launch site: A barge located in approximate position 40°54′45″ N 073°44′55″ W (NAD 1983), approximately 450 yards southwest of the entrance to Horseshoe Harbor. This Safety Zone is a 240-yard radius from the barge.
3.4 Manursing Island, Western Long Island Sound Safety Zone	• Launch site: A barge located in approximate position 40°57′47″ N 073°40′06″ W (NAD 1983), approximately 380 yards north of Rye Beach Transport Rock Buoy 2 (LLNR 25570). This Safety Zone is a 360-yard radius from the barge.
3.5 Glen Island, Western Long Island Sound Safety Zone	• Launch site: A barge located in approximate position 40°53′12″ N 073°46′33″ W (NAD 1983), approximately 350 yards east of the northeast corner of Glen Island, New York. This Safety Zone is a 240-yard radius from the barge.
3.6 Twin Island, Western Long Island Sound Safety Zone	• Launch site: A land shoot located on the east end of Orchard Beach, New York in approximate position 40°52′10″ N 073°47′07″ W (NAD 1983). This Safety Zone is a 200-yard radius from the launch site.
3.7 Davenport Neck, Western Long Island Sound Safety Zone	• Launch site: A barge located in Federal Anchorage 1–A in approximate position 40°53′46″ N 073°46′04″ W (NAD 1983), approximately 360 yards north of Emerald Rock Buoy (LLNR 25810). This Safety Zone is a 360-yard radius from the barge.
3.8 Glen Cove, Hempstead Harbor Safety Zone	• Launch site: A barge located in approximate position 40°51′58″ N 073°39′34″ W (NAD 1983), approximately 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). This Safety Zone is a 360-yard radius from the barge.
3.9 Bar Beach, Hempstead Harbor Safety Zone	• Launch site: A barge located in approximate position 40°49′50″ N 073°39′12″ W (NAD 1983), approximately 190 yards north of Bar Beach, Hempstead Harbor, New York. This Safety Zone is a 180-yard radius from the barge.
3.10 Larchmont Harbor (north), Western Long Island Sound Safety Zone.	• Launch site: A barge located in approximate position 40°55′21.8″ N 073°44′21.7″ W (NAD 1983), approximately 560 yards north of Umbrella Rock. This Safety Zone is a 240-yard radius from the barge.

TABLE 1 TO § 165.160—Continued

3.11 Orchard Beach, The Bronx Safety Zone	• Launch site: All waters of Long Island Sound in an area bound by the following points: 40°51′43.5″ N 073°47′36.3″ W; thence to 40°52′12.2″ N 073°47′13.6″ W; thence to 40°52′02.5″ N 073°46′47.8″ W; thence to 40°51′32.3″ N 073°47′09.9″ W (NAD 1983), thence to the point of origin.
3.12 Larchmont Harbor (south), Western Long Island Sound Safety Zone.	• Launch site: A barge located in approximate position 40°55′16″ N 073°44′15″ W (NAD 1983), approximately 440 yards north of Umbrella Rock, Larchmont Harbor, New York. This Safety Zone is a 240-yard radius from the barge.
3.13 Sands Point Western Long Island Sound Safety Zone	• Launch site: A barge located in approximate position 40°52′03″ N 073°43′39″ W (NAD 1983), northeast of Hart Island, in the vicinity of Sands Point, New York. This Safety Zone is a 180-yard radius from the barge.
3.14 Echo Bay, Western Long Island Sound Safety Zone	• Launch site: A barge located in approximate position 40°54′39.9″ N 073°45′50.3″ W (NAD 1983), southeast portion of Clifford Island, New York. This Safety Zone is a 180-yard radius from the barge.
4.0	East River
4.1 Wards Island, East River Safety Zone	• Launch site: A barge located in approximate position 40°46′57.8″ N 073°55′28.6″ W (NAD 1983), approximately 330 yards north of the Robert F. Kennedy Bridge (Triborough Bridge) Bridge. This Safety Zone is a 150-yard radius from the barge.
4.2 Newtown Creek, East River Safety Zone	• Launch site: A barge located in approximate position 40°44′24″ N 073°58′00″ W (NAD 1983), approximately 785 yards south of Belmont Island. This Safety Zone is a 360-yard radius from the barge.
4.3 Corlears, East River Safety Zone	• Launch site: A barge located in approximate position 40°42′34.53″ N 073°58′33.37″ W (NAD 1983), approximately 570 yards south of the Williamsburg Bridge, 250 yards west of Railroad Avenue, Corlears Hook, New York. This Safety Zone is a 180-yard radius from the barge.
4.4 Seaport, East River Safety Zone	• Safety zone: All waters of the East River south of the Brooklyn Bridge and north of a line drawn from the southwest corner of Pier 3, Brooklyn, to the southeast corner of Pier 6, Manhattan.
5.0	Hudson River
5.1 Pier 60, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°44′49″ N 074°01′02″ W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge.
5.2 The Battery, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°42′00″ N 074°01′17″ W (NAD 1983), approximately 500 yards south of The Battery, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge.
5.3 Battery Park City, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°42′39″ N 074°01′21″ W (NAD 1983), approximately 480 yards southwest of North Cove Yacht Harbor, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge.
5.4 Pier 90, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°46′11.8″ N 074°00′14.8″ W (NAD 1983), approximately 375 yards west of Pier 90, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge.
5.5 Yonkers, NY, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°56′14.5″ N 073°54′33″ W (NAD 1983), approximately 475 yards northwest of the Yonkers Municipal Pier, New York. This Safety Zone is a 360-yard radius from the barge.
5.6 Hastings-on-Hudson, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°59′44.5″ N 073°53′28″ W (NAD 1983), approximately 425 yards west of Hastings-on-Hudson, New York. This Safety Zone is a 360-yard radius from the barge.
5.7 Pier D, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°42′57.5″ N 074°01′34″ W (NAD 1983), approximately 375 yards southeast of Pier D, Jersey City, New Jersey. This Safety Zone is a 360-yard radius from the barge.
5.8 Pier 54, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°44′31″ N 074°01′00″ W (NAD 1983), approximately 380 yards west of Pier 54, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge.
5.9 Pier 84, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°45′56.9″ N 074°00′25.4″ W (NAD 1983), approximately 380 yards west of Pier 84, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge.

TABLE 1 TO § 165.160—Continued

5.10 Peekskill Bay, Hudson River Safety Zone	• Launch site: A barge located in approximate position 41°17′16″ N 073°56′18″ W (NAD 1983), approximately 670 yards north of Travis Point. This Safety Zone is a 360-yard radius from the barge.
5.11 Jersey City, NJ, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°42′37.3″ N 074°01′41.6″ W (NAD 1983), approximately 420 yards east of Morris Canal Little Basin. This Safety Zone is a 360-yard radius from the barge.
5.12 Newburgh, NY, Hudson River Safety Zone	• Launch site: A barge located in approximate position 41°30′01.2″ N 073°59′42.5″ W (NAD 1983), approximately 930 yards east of Newburgh, New York. This Safety Zone is a 360-yard radius from the barge.
5.13 Poughkeepsie, NY, Hudson River Safety Zone	• Launch site: A barge located in approximate position 41°42′24.50″ N 073°56′44.16″ W (NAD 1983), approximately 420 yards north of the Mid Hudson Bridge. This Safety Zone is a 300-yard radius from the barge.
5.14 Pier 40, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°43′30″ N 074°01′06.7″ W (NAD 1983), in the vicinity of the Holland Tunnel Ventilator, 530 yards south of Pier 40, Manhattan, New York. This Safety Zone is a 240-yard radius from the barge.
5.15 Fort Tryon Park, Hudson River Safety Zone	• Launch site: A barge located in approximate position 40°51′52″ N 073°56′24″ W (NAD 1983), approximately 1750 yards north of the George Washington Bridge. This Safety Zone is a 180-yard radius from the barge.
6.0	Hutchinson River
6.1 Bronx, NY Hutchinson River Safety Zone	• Launch site: A barge located in approximate position 40°52′31″ N 073°49′24″ W (NAD 1983). This Safety Zone is a 120-yard radius from the barge.

TABLE 2 TO § 165.160

1.0	Hudson River
1.1 Hudson Valley Triathlon	• Event Type: Swim Event. • Date: The first weekend after the 4th of July. • The following area is a safety zone: All waters of the Hudson River in the vicinity of Ulster Landing, Bound by the following points: 42°00′03.7″ N, 073°56′34.2″ W; thence to 41°59′52.5″ N, 073°56′34.2″ W thence to 42°00′15.1″ N, 073°56′25.2″ W thence to 42°00′05.4″ N, 073°56′41.9″ W thence along the shoreline to the point of beginning.
1.2 Newburgh Beacon Swim	• Event Type: Swim Event. • Date: Last weekend in July with a rain date of the first weekend in August. • Location: Participants will cross the Hudson River between Newburgh and Beacon, New York approximately 1300 yards south of the Newburgh-Beacon Bridges.
1.3 Hudson River Swim for Life	• Event Type: Swim Event. • Date: 2nd weekend in September. • Location: Participants will cross the Hudson River in the vicinity of Nyack, New York between Lower Nyack Ledge and Kingsland Point, approximately 200 yards north of the Tappan Zee Bridge.
1.4 Toughman Half Triathlon	• Event Type: Swim Event. • Date: 2nd weekend in September. • Location: Participants will swim in the vicinity of Croton Point Park, New York between Potato Rock and Harmon, New York from the shoreline out to 1000 yards.
2.0	East River
2.1 Brooklyn Bridge Swim	• Event Type: Swim Event. • Date: 2nd weekend in September.
	• Location: Participants will swim between Brooklyn and Manhattan, New York crossing the East River along the Brooklyn Bridge.
3.0	Western Long Island Sound
3.1 Swim Across America	• Event Type: Swim Event. • Date: 4th weekend in July and 2nd weekend in August.

TABLE 2 TO § 165.160—Continued

	• Location: Participants will swim between Glen Cove and Larchmont, New York and an area of Hempstead Harbor between Glen Cove and the vicinity of Umbrella Point.
4.0	Upper New York Bay, Lower New York Bay
4.1 Ederle Swim	• Event Type: Swim Event. • Date: October. • Location: Participants will swim between Manhattan, New York and the north shore of Sandy Hook, New Jersey transiting through the upper New York Bay, under the Verrazano-Narrows Bridge and across the Lower New York Bay. The route direction is determined by the predicted tide state and direction of current on the scheduled day of the event.
4.2 Rose Pitonof Swim	• Event Type: Swim Event. • Date: The 2nd weekend in August. • Location: Participants will swim between Manhattan, New York and the shore of Coney Island, New York transiting through the Upper New York Bay, under the Verrazano-Narrows Bridge and south in the Lower New York Bay. The route direction is determined by the predicted tide state and direction of current on the scheduled day of the event.

Dated: May 24, 2011.

L.L. Fagan,

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

[FR Doc. 2011–16111 Filed 6–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0546]

RIN 1625–AA00

Safety Zone; Labor Day Fireworks, Ancarrows Landing Park, James River, Richmond, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone on the navigable waters of James River in Richmond, VA in support of the Labor Day Fireworks event. This action is necessary to provide for the safety of life on navigable waters during the Labor Day Fireworks show. This action is intended to restrict vessel traffic movement to protect mariners and spectators from the hazards associated with aerial fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before July 29, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0546 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of proposed rulemaking, call or e-mail LCDR Christopher O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Christopher.A.ONeal@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage 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 have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0546), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0546'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit

comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0546'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Christopher O'Neal at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

On September 5, 2011 the City of Richmond will sponsor a fireworks display on the shoreline of the navigable waters of the James River centered on position 37°31′13.1″ N/077°25′07.84″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted within 420 feet of the fireworks launch site.

Discussion of Proposed Rule

The Coast Guard proposes establishing a temporary safety zone on specified waters of the James River within the area bounded by a 420-foot radius circle centered on position 37°31′13.1″ N/077°25′07.84″ W (NAD 1983). This safety zone will be established in the vicinity of Richmond, VA from 8 p.m. to 9 p.m. on September 5, 2011. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration, it is limited in size, and maritime advisories will be issued allowing the mariners to adjust their plans accordingly.

This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the James River from 8 p.m. to 9 p.m. on September 5, 2011.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Christopher O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail *Christopher.A.ONeal@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and

have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a safety zone around a fireworks display. The fireworks are launched from land and the safety zone is intended to keep mariners away from any debris that may enter the water. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–0546 to read as follows:

165.T05–0546 Safety Zone; Labor Day Fireworks, Ancarrows Landing Park, James River, Richmond, VA.

(a) *Regulated Area.* The following area is a safety zone: Specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the vicinity of the James River in Richmond, VA and within 420 feet of position 337°31′13.1″ N/077°25′07.84″ W (NAD 1983).

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

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

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

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

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

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement period.* This regulation will be enforced from 8 p.m. until 9 p.m. on September 5, 2011.

Dated: June 17, 2011.

Mark S. Ogle,

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

[FR Doc. 2011–16345 Filed 6–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 7, 9, 11, 12, 13, 14, 15, 16, 18, 37, 42, 52, and 53

[FAR Case 2011–001; Docket 2011–0001; Sequence 1]

RIN 9000–AL82

Federal Acquisition Regulation; Organizational Conflicts of Interest

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to provide revised regulatory coverage on organizational conflicts of interest (OCIs), provide additional coverage regarding contractor access to nonpublic information, and add related provisions and clauses. Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 required a review of the FAR coverage on OCIs. This proposed rule was developed as a result of a review conducted in accordance with Section 841 by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) and the Office of Federal Procurement Policy (OFPP), in consultation with the Office of Government Ethics (OGE). This proposed rule was preceded by an Advance Notice of Proposed Rulemaking (ANPR), under FAR Case 2007–018 (73 FR 15962), to gather comments from the public with regard to whether and how to improve the FAR coverage on OCIs. The comment period is being reopened for an additional 30 days to provide additional time for interested parties to review the proposed FAR changes.

DATES: The comment period for the proposed rule that published on April 26, 2011 at 76 FR 23236 is reopened. Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before July 27, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2011–001 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2011–001'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2011–001.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2011–001'' on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), *ATTN:* Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2011–001, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Robinson, Procurement Analyst, at (202) 501–2658, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2011–001.

SUPPLEMENTARY INFORMATION:

Background

The Councils published a proposed rule in the **Federal Register** at 76 FR 23236, April 26, 2011. The comment period is being reopened for an additional 30 days to provide additional time for interested parties to review the proposed FAR changes. Therefore, accordingly, the comment period for the proposed rule that published on April 26, 2011 at 76 FR 23236 is reopened.

Dated: June 23, 2011.

Millisa Gary,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 2011–16338 Filed 6–28–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

RIN 0750–AG47

Defense Federal Acquisition Regulation Supplement; Safeguarding Unclassified DoD Information (DFARS Case 2011–D039)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new subpart and associated contract clauses to address requirements for safeguarding unclassified DoD information.

DATES: Comments on the proposed rule should be submitted in writing to one of the addresses shown below on or before August 29, 2011, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D039, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D039 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, *Attn:* Mr. Julian Thrash, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

To confirm receipt of your comment, please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, telephone 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

The DFARS does not presently address the safeguarding of unclassified DoD information within industry, nor does it address cyber intrusion reporting for that information. DoD published an Advance Notice of Proposed Rulemaking (ANPR), and notice of public meeting in the **Federal Register**

at 75 FR 9563 on March 3, 2010, to provide the public an opportunity for input into the initial rulemaking process. The ANPR addressed basic and enhanced safeguarding procedures for the protection of DoD information.

The purpose of this proposed DFARS rule is to implement adequate security measures to safeguard unclassified DoD information within contractor information systems from unauthorized access and disclosure, and to prescribe reporting to DoD with regard to certain cyber intrusion events that affect DoD information resident on or transiting through contractor unclassified information systems. This rule addresses the safeguarding requirements specified in Executive Order 13556, Controlled Unclassified Information. On-going efforts, currently being led by the National Archives and Records Administration regarding controlled unclassified information, may also require future DFARS revisions in this area. This case does not address procedures for Government sharing of cyber security threat information with industry; this issue will be addressed separately through follow-on rulemaking procedures as appropriate.

This proposed rule addresses basic and enhanced safeguarding requirements, including cyber incident reporting, that apply to information subject to the following for information—

- Designated as critical program information in accordance with DoD Instruction 5200.39, Critical Program Information (CPI) Protection Within the Department of Defense, at *http://www.dtic.mil/whs/directives/corres/pdf/520039p.pdf;*
- Designated as critical information in accordance with DoD Directive 5205.02, DoD Operations Security (OPSEC) Program, at *http://www.dtic.mil/whs/directives/corres/pdf/520502p.pdf;*
- Subject to export controls under International Traffic in Arms Regulations and Export Administration Regulations;
- Exempt from mandatory public disclosure under DoD Directive 5400.07, DoD Freedom of Information Act (FOIA) Program, at *http://www.dtic.mil/whs/directives/corres/pdf/540007p.pdf*, and DoD Regulation 5400.7–R, DoD Freedom of Information Program, at *http://www.dtic.mil/whs/directives/corres/pdf/540007r.pdf*;
- Bearing current and prior designations indicating controlled access and dissemination (e.g., For Official Use Only, Sensitive But Unclassified, Limited Distribution, Proprietary, Originator Controlled, Law Enforcement Sensitive);
- That is technical data, computer software, and any other technical information covered by DoD Directive 5230.24, Distribution Statements on Technical Documents, at *http://www.dtic.mil/whs/directives/corres/pdf/523024p.pdf*, and DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure, at *http://www.dtic.mil/whs/directives/corres/pdf/523025p.pdf*; or
- That is personally identifiable information including, but not limited to, information protected pursuant to the Privacy Act and the Health Insurance Portability and Accountability Act.

The proposed DFARS changes would revise the clause at DFARS 252.204–7000, Disclosure of Information, to add a definition of ''DoD information,'' and ''nonpublic information.'' This case also proposes to add two new clauses—

- DFARS 252.204–70XX, Basic Safeguarding of Unclassified DoD Information; and
- DFARS 252.204–70YY, Enhanced Safeguarding of Unclassified DoD Information.

DFARS 252.204–70XX, Basic Safeguarding of Unclassified DoD Information, would require the implementation of first-level protection measures for the protection of Government information; with the point to deter unauthorized disclosure, loss, or exfiltration by employing first-level information technology security measures.

DFARS 252.204–70YY Enhanced Safeguarding of Unclassified DoD Information, would require enhanced information technology security measures applicable to the encryption of data for storage and transmission, network protection and intrusion detection, and cyber intrusion reporting. A cyber intrusion reporting requirement is planned for enhanced protection to assess the impact of loss and improve protection by better understanding the methods of loss.

II. Executive Orders 12861 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD expects that this proposed rule may have an economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows.

The objective of this rule is for DoD to avoid compromise of unclassified computer networks on which DoD information is resident on or transiting through contractor information systems, and to prevent the exfiltration of DoD information on such systems. The benefit of tracking and reporting DoD incursions is to—

- Assess the impact of loss;
- Better understand methods of loss;
- Facilitate information sharing and collaboration; and
- Standardize procedures for tracking and reporting intrusions.

This proposed rule requires a basic and an enhanced level of information protection. For the basic protection, the resultant cost impact is considered to not be significant since the first-level protective measures (i.e. updated virus protection, the latest security software patches, etc.) are typically employed as part of the routine course of doing business. It is recognized that the cost of not using basic information technology system-protection measures would be an enormous detriment to contractor and DoD business, resulting in reduced system performance, and the potential loss of valuable information. It is also recognized that prudent business practices to protect an information technology system are typically a common part of everyday operations. As a result, the benefit of securely receiving and processing unclassified DoD information offers enormous value to contractors and DoD by reducing vulnerabilities to contractor systems by keeping unclassified DoD information from being exfiltrated.

DoD requires an enhanced level of information assurance planning, including reporting of information loss or cyber-intrusions for DoD contractors that handle DoD unclassified information that has special handling requirements for critical program information. This requirement would also be passed down through the supply chain. DoD believes that most

information passed down the supply chain will not require special handling and recognizes that most large contractors handling sensitive information already have sophisticated information assurance programs and can take credit for existing controls with minimal additional cost. However, most non-large businesses have less sophisticated programs and will realize costs meeting the additional requirements.

DoD estimates that the rule will apply to approximately 76 percent of DoD's small business contractors in that they will be required to provide protection of DoD information at the enhanced level. DoD awarded contracts to 64,427 businesses with unique parent Data Universal Numbering System identified as small businesses in fiscal year 2010, so the estimated impact of this rule is to 48,965 unique small businesses. Additionally, a reasonable rule of thumb for small businesses is that information technology security costs are approximately 0.5 percent of total revenues. Because there are economies of scale when it comes to information security, larger businesses generally pay only a fraction of that estimated cost as a percentage of total revenue.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D039) in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies because the proposed rule does contain information collection requirements. DoD invites comments on the following aspects of the proposed rule: (a) Whether the collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The following is a summary of the information collection requirement.

Title: Defense Federal Acquisition Regulation Supplement; Safeguarding of Unclassified Information.

Type of Request: New collection.

Number of Respondents: 65,728.

Responses per Respondent: Approximately 0.5

Annual Responses: 32,864.

Average Burden per Response: 1 hour.

Annual Burden Hours: 32,864.

Needs and Uses: DoD needs the information required by 252.204–70YY in order to properly track cyber incident reporting of unclassified information within industry.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations System, Attn: Mr. Julian Thrash, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, *Attn:* Mr. Julian Thrash, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 204 and 252 as follows:

1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204–ADMINISTRATIVE MATTERS

2. Add subpart 204.74 to read as follows:

Subpart 204.74—Safeguarding Unclassified DoD Information

204.7400 Scope.
204.7401 Definitions.
204.7402 Policy.
204.7403 Procedures.
204.7404 Contract clauses.

Subpart 204.74—Safeguarding Unclassified DoD Information

204.7400 Scope.

(a) This subpart applies to contracts and subcontracts requiring basic and enhanced safeguarding of unclassified DoD information resident on or transiting through contractor information systems.

(b) This subpart does not apply to voice information.

(c) This subpart does not abrogate any existing contractor physical, personnel, or general administrative security operations governing the protection of unclassified DoD information, nor does it apply to or impact upon contractors' National Industrial Security Program.

204.7401 Definitions.

As used in this subpart—

Adequate security is defined in the clause at 252.204–70XX, Basic Safeguarding of Unclassified DoD Information.

Cyber is defined in the clause at 252.204–70YY, Enhanced Safeguarding of Unclassified DoD Information.

DoD information and *nonpublic information* are defined in the clause at 252.204–7000, Disclosure of Information.

204.7402 Policy.

(a) The Government and its contractors and subcontractors will provide adequate security to safeguard unclassified DoD information on their unclassified information systems from unauthorized access and disclosure.

(b) Contractors must report to the Government certain cyber incidents that affect unclassified DoD information resident on or transiting contractor unclassified information systems. Detailed reporting criteria and requirements are set forth in the clause at 252.204–70YY.

(c) A cyber incident that is properly reported by the contractor shall not, by itself, be interpreted as evidence that the contractor has failed to provide adequate information safeguards for DoD unclassified information, or has otherwise failed to meet the requirements of the clause at 252.204–70YY. Contracting officers shall consult with a functional manager to assess contract performance. A cyber incident will be evaluated in context, and such events may occur even in cases when it is determined that adequate safeguards are being used in view of the nature and sensitivity of the DoD unclassified

information and the anticipated threats. However, the Government may consider any such cyber incident in the context of an overall assessment of the contractor's compliance with the requirements of the clause at 252.204–70YY.

(d) DoD information may require—

(1) Basic safeguarding requirements, as specified in clause 252.204–70XX, apply to any DoD information; and

(2) Enhanced safeguarding requirements, including cyber incident reporting as specified in clause 252.204.70YY, apply to DoD information that is—

(i) Designated as Critical Program Information in accordance with DoD Instruction 5200.39, Critical Program Information Protection Within the Department of Defense;

(ii) Designated as critical information in accordance with DoD Directive 5205.02, DoD Operations Security (OPSEC) Program;

(iii) Subject to export control under International Traffic in Arms Regulations and Export Administration Regulations (see subpart 204.73);

(iv) Exempt from mandatory public disclosure under DoD Directive 5400.07, DoD Freedom of Information Act (FOIA) Program, and DoD Regulation 5400.7–R, DoD Freedom of Information Program;

(v) Bearing current and prior designations indicating controlled access and dissemination (e.g., For Official Use Only, Sensitive But Unclassified, Limited Distribution, Proprietary, Originator Controlled, Law Enforcement Sensitive);

(vi) Technical data, computer software, and any other technical information covered by DoD Directive 5230.24, Distribution Statements on Technical Documents, and DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure; or

(vii) Personally identifiable information including, but not limited to, information protected pursuant to the Privacy Act and the Health Insurance Portability and Accountability Act.

204.7403 Procedures.

The contracting officer shall receive input from the requirements office, which will determine information controls for access and distribution (follow the procedures at PGI 204.74).

204.7404 Contract clauses.

(a) Use the clause at 252.204–70XX, Basic Safeguarding of Unclassified DoD Information, in solicitations and contracts when the requiring activity has identified that the contractor or a subcontractor at any tier will potentially have unclassified DoD information resident on or transiting through its unclassified information systems; and

(b) Use the clause at 252.204–70YY, Enhanced Safeguarding of Unclassified DoD Information, in solicitations and contracts when the requiring activity has identified that the contractor or a subcontractor at any tier will potentially have unclassified DoD information resident on or transiting through its unclassified information systems that requires an enhanced level of protection.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.204–7000 is revised to read as follows:

252.204–7000 Disclosure of Information.

As prescribed in 204.404–70(a), use the following clause:

DISCLOSURE OF INFORMATION (DATE)

(a) *Definitions.* As used in this clause—

DoD information means any nonpublic information that—

(1) Has not been cleared for public release in accordance with DoD Directive 5230.09, Clearance of DoD Information for Public Release; and

(2) Is—

(i) Provided by or on behalf of the Department of Defense (DoD) to the Contractor or its subcontractor(s); or

(ii) Collected, developed, received, transmitted, used, or stored by the Contractor or its subcontractor(s) in support of an official DoD activity.

Nonpublic information means any Government or third-party information that–

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public, and the Government has not yet determined whether the information can or will be made available to the public.

(b) The Contractor shall not release any unclassified DoD information to anyone outside the Contractor's organization any unclassified information, or any employee inside the Contractor's organization without a need-to-know, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) This information is required—

(i) As part of an official Defense Contract Audit Agency audit;

(ii) By DoD Offices of the Inspector General as part of pending or on-going investigations; or

(iii) By a Congressional or Federal (Department of Justice) subpoena.

(2) The information is otherwise in the public domain before the date of release; or

(3) This information results from or arises during the performance of a project that has been scoped, negotiated, and determined to be fundamental research within the definition of National Security Decision Directive 189 according to the prime contractor and research performer and certified by the contracting component, and that is not subject to restrictions due to classification, except as otherwise required by applicable Federal statutes, regulations, or Executive orders.

(c) Requests for approval shall identify the specific DoD information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(d) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

4. Add sections 252.204–70XX and 252.204–70YY as follows:

252.204–70XX Basic Safeguarding of Unclassified DoD Information.

As prescribed in 204.7404(a), use the following clause:

BASIC SAFEGUARDING OF UNCLASSIFIED DOD INFORMATION (DATE)

(a) *Definitions.* As used in this clause—

Adequate security means protective measures are applied commensurate with the risks (i.e., consequences and their probability) of loss, misuse, or unauthorized access to or modification of information.

Clearing information means a level of media sanitization that would protect the confidentiality of information against a robust keyboard attack. Simple deletion of items would not suffice for clearing. For example, overwriting is an acceptable method for clearing media. The security goal of the overwriting process is to replace written data with random data.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred.

Data means a subset of information in an electronic format that allows it to be retrieved or transmitted.

DoD information is defined in the clause 252.204–7000, Disclosure of Information.

Exfiltration means any unauthorized release of data from within an information system. This includes copying the data through covert network channels or the copying of data to unauthorized media.

Government information means any unclassified nonpublic information that is—

(1) Provided by or on behalf of the Government to the contractor or its subcontractor(s); or

(2) Collected, developed, received, maintained, disseminated, transmitted, used, or stored by the Contractor or its subcontractor(s) in support of an official Government activity.

Information means any communicable knowledge or documentary material, regardless of its physical form or characteristics.

Information system means a set of information resources organized for the collection, storage, processing, maintenance, use, sharing, dissemination, disposition, display, or transmission of information.

Intrusion means unauthorized access to an information system, such as an act of entering, seizing, or taking possession of another's property to include electromagnetic media.

Media means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

Nonpublic information is defined in the clause 252.204–7000, Disclosure of Information.

Safeguarding means measures and controls that are used to protect DoD information.

Threat means any person or entity that attempts to access or accesses an information system without authority.

Voice means all oral information regardless of transmission protocol.

(b) *Safeguarding requirements and procedures.* The Contractor shall provide adequate security to safeguard unclassified Government information on its unclassified information systems from unauthorized access and disclosure. The Contractor shall apply the following basic safeguarding requirements to Government information:

(1) *Protecting unclassified Government information on public computers or websites:* Do not process unclassified Government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Unclassified Government information shall not be posted on websites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (vice the website itself or the application it hosts).

(2) *Transmitting electronic information.* Transmit email, text messages, blogs, and similar communications using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

(3) *Transmitting voice and fax information.* Transmit voice and fax information only when the sender has a reasonable assurance that access is limited to authorized recipients.

(4) *Physical or electronic barriers.* Protect information by at least one physical or electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.

(5) *Sanitization.* At a minimum, clear information on media that has been used to process unclassified Government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800–88, Guidelines for Media Sanitization, at *http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_rev1.pdf.*

(6) *Intrusion protection.* Provide at least the following protections against computer intrusions and data compromise including exfiltration:

(i) Current and regularly updated malware protection services, e.g., anti-virus, anti-spyware.

(ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.

(7) *Transfer limitations.* Transfer Government information only to those subcontractors that both have a need to know and provide at least the same level of security as specified in this clause.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts under this contract that may potentially have unclassified Government information resident on or transiting through their unclassified information systems.

(End of clause)

252.204–70YY Enhanced Safeguarding of Unclassified DoD Information.

As prescribed in 204.7404(b), use the following clause:

ENHANCED SAFEGUARDING OF UNCLASSIFIED DOD INFORMATION (DATE)

(a) *Definitions.* As used in this clause—

Adequate security is defined in the clause 252.204–70XX, Basic Safeguarding of Unclassified DoD Information.

Attribution information means information that identifies the Contractor or its programs, whether directly or indirectly, by the aggregation of information that can be traced back to the Contractor (e.g., program description, facility locations, number of personnel).

Authentication means the process of verifying the identity or other attributes claimed by or assumed of an entity, or to verify the source and integrity of data.

Compromise is defined in the clause 252.204–70XX, Basic Safeguarding of Unclassified DoD Information.

Contractor information system means an information system belonging to, or operated by or for, the Contractor or a subcontractor.

Critical Program Information means elements or components of a research, development, or acquisition program that, if compromised, could cause significant degradation in mission effectiveness; shorten the expected combat-effective life of the system; reduce technological advantage; significantly alter program direction; or enable an adversary to defeat, counter, copy, or reverse engineer the technology or capability. The term includes information about applications, capabilities, processes, and end items; elements or components critical to a military system or network mission effectiveness; and technology that would reduce the U.S. technological advantage if it came under foreign control.

Cyber means of, relating to, or involving computers or computer networks.

Data means a subset of information in an electronic format that allows it to be retrieved or transmitted.

DoD information is defined in the clause 252.204–7000, Disclosure of Information.

Exfiltration, Information and *Information system* are defined in the clause 252.204–70XX, Basic Safeguarding of Unclassified DoD Information.

Incident means unauthorized access to an information system, such as an act of entering, seizing, or taking possession of another's property to include electromagnetic media.

Intrusion, Media, Safeguarding and *Threat* are defined in the clause 252.204–70XX, Basic Safeguarding of Unclassified DoD Information.

(b) *Safeguarding requirements and procedures.* The Contractor shall provide adequate security to safeguard unclassified DoD information on its information systems from unauthorized access and disclosure. Adequate security includes—

(1) Safeguarding all unclassified DoD information in accordance with the basic requirements set forth in DFARS clause 252.204–70XX, Basic Safeguarding of Unclassified DoD Information;

(2) Safeguarding DoD information described in paragraph (c) of this clause in accordance with—

(i) The enhanced safeguarding requirements, as a minimum, in paragraph (d) of this clause; and

(ii) The Contractor shall apply other information security requirements when the Contractor reasonably determines that information security measures, in addition to those identified in paragraph (b)(1) and (b)(2)(i) of this clause, may be required to provide adequate security in a dynamic environment based on an assessed risk or vulnerability.

(c) *DoD information requiring enhanced safeguarding.* Enhanced safeguarding requirements, including cyber incident reporting, apply to DoD information that is—

(1) Designated as Critical Program Information in accordance with DoD Instruction 5200.39, Critical Program Information (CPI) Protection Within the Department of Defense;

(2) Designated as critical information in accordance with DoD Directive 5205.02, DoD Operations Security (OPSEC) Program;

(3) Subject to export controls under International Traffic in Arms Regulations and Export Administration Regulations;

(4) Exempt from mandatory public disclosure under DoD Directive 5400.07, DoD Freedom of Information Act (FOIA) Program, and DoD Regulation 5400.7–R, DoD Freedom of Information Program;

(5) Bearing current and prior designations indicating controlled access and dissemination (e.g., For Official Use Only, Sensitive But Unclassified, Limited Distribution, Proprietary, Originator Controlled, Law Enforcement Sensitive);

(6) Technical data, computer software, and any other technical information covered by DoD Directive 5230.24, Distribution Statements on Technical Documents, and

DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure; or

(7) Personally identifiable information including, but not limited to, information protected pursuant to the Privacy Act and the Health Insurance Portability and Accountability Act.

(d) *Enhanced safeguarding requirements.* (1) The Contractor shall apply the following safeguarding requirements for DoD information that requires enhanced safeguarding:

(2) The Contractor shall implement information security in its project, enterprise, or company-wide unclassified information technology system(s). The information security program shall implement, at a minimum, the specified National Institute of Standards and Technology (NIST) Special Publication (SP) 800–53 security controls identified in paragraph (d)(3) of this Enhanced Safeguarding clause of this contract, or, if the control is not implemented, the Contractor shall prepare a written determination that explains how either the required security control identified in paragraph (d)(3) of this clause is not applicable, or how an alternative control or protective measure is used to achieve equivalent protection. The Contractor shall provide the written determination to the Contracting Officer upon request. A description of the security controls is in the NIST SP 800–53 (current version at time of award), ''Recommended Security Controls for Federal Information Systems and Organizations'' (*http://csrc.nist.gov/publications/PubsSPs.html*).

(3) The NIST SP 800–53 (current version at time of award) security controls identified in Table 1 of this clause provide a minimum level of enhanced safeguarding for unclassified DoD Information. The Contractor shall implement these controls in accordance with paragraph (d)(2) and Table 1. Tailoring in scope and depth appropriate to the effort may be used as authorized in the contract.

TABLE 1—MINIMUM SECURITY CONTROLS FOR ENHANCED SAFEGUARDING MINIMUM REQUIRED SECURITY CONTROLS FOR DOD INFORMATION REQUIRING ENHANCED SAFEGUARDING IN ACCORDANCE WITH PARAGRAPH (b)(2) OF THE ENHANCED SAFEGUARDING CLAUSE OF THIS CONTRACT (REFERENCE NIST SP 800–53, ''RECOMMENDED SECURITY CONTROLS FOR FEDERAL INFORMATION SYSTEMS AND ORGANIZATIONS'')

Access control	Awareness & training	Contingency planning	Maintenance	System & comm protection
AC–2	AT–2	CP–9	MA–4	SC–2.
AC–3			MA–4(6)	SC–4.
AC–3(4)	Audit & Accountability	Identification and Authentication.	MA–5	SC–7.
AC–4	AU–2		MA–6	SC–7(2).
AC–6	AU–3	IA–2		SC–9.
AC–7	AU–6	IA–4	Media Protection	SC–9(1).
AC–11	AU–6(1)	IA–5	MP–4	SC–13.
AC–11(1)	AU–7	IA–5(1)	MP–6	SC–13(1).
AC–17	AU–8			SC–13(4).
AC–17(2)	AU–9	Incident Response	Physical and Environmental Protection.	SC–15.
AC–18	AU–10			SC–28.
AC–18(1)	AU–10(5)	IR–2	.	
AC–19		IR–4	PE–5	System & Information Integrity.
	Configuration Management	IR–5	PE–7	SI–2.
		IR–6		SI–3.
	CM–2		Program Management	SI–4.
	CM–6			
	CM–7		PM–10	
	CM–8			

Legend: AC: Access Control, AT: Awareness and Training, AU: Auditing and Accountability Protection, CM: Configuration Management, CP: Contingency Planning Acquisition, IA: Identification and Authentication Communications Protection, IR: Incident Response Integrity, MA: Maintenance, MP: Media Protection, PE: Physical & Environmental, PM: Program Management, SA: System and Services, SC: System, & SI: System & Information.

(4) *Authentication to DoD Information Systems.* In addition to the NIST SP 800–53 security control requirements for authentication, Contractor personnel will procure and use only DoD-approved identity authentication credentials for authentication to DoD information systems. Information system owners/operators will identify all appropriate DoD-approved identity credentials that can be used for authentication to an information system.

(e) *Other requirements.* This clause does not relieve the Contractor of the requirements specified by other Federal and DoD safeguarding requirements for categories of information (e.g., Critical Program Information, Operations Security, International Traffic in Arms Regulations, Export Administration Regulations, Freedom of Information Act, For Official Use Only, Sensitive But Unclassified, Limited Distribution, Proprietary, Originator Controlled, Law Enforcement Sensitive, Personally Identifiable Information, Privacy Act, and Health Insurance Portability and Accountability Act), as specified by applicable regulations or directives.

(f) *Cyber incident reporting.* (1) *Reporting requirement.* The Contractor shall report to DoD (URL to be determined) within 72 hours of discovery of any cyber incident, in accordance with paragraph (f)(2), that affects DoD information resident on or transiting through the Contractor's unclassified information systems.

(2) *Reportable cyber incidents.* Reportable cyber incidents include the following:

(i) A cyber incident involving possible data exfiltration or manipulation or other loss or compromise of any DoD information resident on or transiting through its, or its subcontractors', unclassified information systems.

(ii) Incident activities not included in paragraph (f)(2)(i) or (ii) of this clause that allow unauthorized access to an unclassified information system on which DoD information is resident on or transiting.

(3) *Other reporting requirements.* This reporting in no way abrogates the Contractor's responsibility for additional safeguarding and cyber incident reporting requirements pertaining to its unclassified information systems under other clauses that may apply to its contract, or as a result of other U.S. Government legislative and regulatory requirements that may apply (e.g., Critical Program Information, Operations Security, International Traffic in Arms Regulations, Export Administration Regulations, Freedom of Information Act, For Official Use Only, Sensitive But Unclassified, Limited Distribution, Proprietary, Originator Controlled, Law Enforcement Sensitive, Personally Identifiable Information, Privacy Act, and Health Insurance Portability and Accountability Act).

(4) *Contents of the cyber incident report.* The Contractor shall report the cyber incident to DoD using the incident form available at the following DoD URL: (URL to be determined).

(5) *Contractor actions to support forensic analysis and preliminary damage assessment.* In response to the reported cyber incident, the Contractor shall—

(i) Conduct an immediate review of its unclassified network for evidence of intrusion to include, but is not limited to, identifying compromised computers, servers, specific data and users accounts. This includes analyzing information systems that were part of the initial compromise, as well as other information systems on the network that were accessed as a result of the initial compromise.

(ii) Review the data accessed during the cyber incident to identify specific DoD information associated with DoD programs, systems or contracts, including military programs, systems and technology.

(iii) The Contractor shall preserve and protect images of known affected information systems and all relevant monitoring/packet capture data until DoD has received the image and completes its analysis, or declines interest.

(iv) Cooperate with the DoD Damage Assessment Management Office (DAMO) to identify systems compromised as a result of the incident.

(v) Provide points of contact to coordinate damage assessment activities.

(6) *Damage assessment activities.* DAMO may conduct a damage assessment. If it is determined that the incident requires a damage assessment, DAMO will notify the Contractor to provide digital media and a point of contact to coordinate future damage assessment activities. The Contractor shall comply with DAMO information requests.

(g) *Protection of reported information.* Except to the extent that such information is publicly available, DoD will protect information reported or otherwise provided to DoD under this clause in accordance with applicable statutes, regulations, and policies (e.g., Critical Program Information, Operations Security, International Traffic in Arms Regulations, Export Administration Regulations, Freedom of Information Act, For Official Use Only, Sensitive But Unclassified, Limited Distribution, Proprietary, Originator Controlled, Law Enforcement Sensitive, Personally Identifiable Information, Privacy Act, and Health Insurance Portability and Accountability Act).

(1) The Contractor and its subcontractors shall mark attribution information reported or otherwise provided to the Government. The Government may use attribution information and disclose it only to authorized persons for cyber security and related purposes and activities pursuant to this clause (e.g., in support of forensic analysis, incident response, compromise or damage assessments, law enforcement, counterintelligence, threat reporting, trend analyses). Attribution information is shared outside of DoD only to authorized entities on a need-to-know basis as required for such Government cyber security and related activities. The Government may disclose attribution information to support contractors that are supporting the Government's cyber security and related activities under this clause only if the support contractor is subject to legal confidentiality requirements that prevent any further use or disclosure of the attribution information.

(2) The Government may use and disclose reported information that does not include attribution information (e.g., information regarding threats, vulnerabilities, incidents, or countermeasures at its discretion to assist entities in protecting information or information systems (e.g., threat information products, threat assessment reports); provided that such use or disclosure is otherwise authorized in accordance with applicable statutes, regulations, and policies.

(h) Nothing in this clause limits the Government's ability to conduct law enforcement or counterintelligence activities, or other lawful activities in the interest of national security. The results of the activities described in this clause may be used to support an investigation and prosecution of any person or entity, including those attempting to infiltrate or compromise information on a Contractor information system in violation of any statute.

(i) *Third party information.* If providing or sharing information is barred by the terms of a nondisclosure agreement with a third party, the Contractor will seek written permission from the owner of any third-party data believed to be contained in images or media that may be shared with the Government. Absent the written permission, the third-party information owner may have the right to pursue legal action against the Contractor (or its subcontractors) with access to the nonpublic information for breach or unauthorized disclosure.

(j) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (j), in all subcontracts under this contract that may have unclassified DoD information that requires enhanced protection. In altering this clause to identify the appropriate parties, the Contractor shall modify the reporting requirements to include notification to the prime Contractor or the next higher tier in addition to the reports to the DoD as required by paragraph (f) of this clause.

(End of clause)

[FR Doc. 2011–16399 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2011–0024; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition (Petition) to list the eastern small-footed bat (*Myotis leibii*) and the northern long-eared bat (*Myotis septentrionalis*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and designate critical habitat. Based on our review, we find that the Petition presents substantial scientific or commercial information indicating that listing of the eastern small-footed bat and the northern long-eared bat may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of these species to determine if listing the eastern small-footed bat or the northern long-eared bat, or both species is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding these species. Based on the status review, we will issue a 12-month finding on the Petition, which will address whether the petitioned action is warranted, as provided in the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before August 29, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is Eastern Standard Time on this date. After August 29, 2011, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R5–ES–2011–0024, which is the docket number for this finding. Follow the instructions for submitting comments on this docket.

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2011–0024; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mails or faxes. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us, See Request for Information below for more information.

FOR FURTHER INFORMATION CONTACT: Clint Riley, Field Supervisor, Pennsylvania Ecological Services Field Office, 315 South Allen Street, Suite 322, State College, PA 16801; by telephone at 814–234–4090, or by facsimile at 814–234–0748. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the eastern small-footed bat and northern long-eared bat from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which are:

(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.

(3) Species-specific population data (*e.g.,* hibernaculum counts) pre- and post-exposure to white-nose syndrome (WNS).

If, after the status review, we determine that listing the eastern small-footed bat and or the northern long-eared bat is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the eastern small-footed bat and northern long-eared bat, we request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species'';

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on ''specific areas outside the geographical area occupied by the species'' that are ''essential to the conservation of the species.'' Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the Service's Pennsylvania Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register.**

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

We received a Petition dated January 21, 2010, from Mollie Matteson, Center for Biological Diversity, requesting that the eastern small-footed bat and northern long-eared bat be listed as threatened or endangered and that critical habitat be designated under the Act. The Petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a February 19, 2010, letter to the petitioner, we acknowledged receipt of the Petition and stated that we would review the petitioned request for listing and inform the petitioner of our determination upon completion of our review. On June 23, 2010, we received a notice of intent to sue (NOI) from the petitioner for failing to make a timely 90-day finding. In a letter dated July 20, 2010, we responded to the NOI, stating that we had assigned lead for the two bat species to the Services' Midwest and Northeast Regions, and that although completing the 90-day finding within the 90-day receipt of Petition was not practicable, the Regions were recently allocated funding to work on the findings and had begun review of the Petition. This finding addresses the Petition to list the eastern small-footed bat and the northern long-eared bat.

Previous Federal Actions

On September 18, 1985 (50 FR 37958), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), the Service issued Notices of Review identifying the eastern small-footed bat as a ''category-2 candidate'' for listing under the Act. However, on December 5, 1996 (50 FR 64481), the Service discontinued the practice of maintaining a list of species regarded as ''category-2 candidates,'' that is, taxa for which the Service has insufficient information to support issuance of a proposed listing rule. To date, no Federal actions have been taken with regard to the northern long-eared bat.

Species Information

Eastern Small-Footed Bat

The eastern small-footed bat (*Myotis leibii*), formerly known as Leib's bat, is a member of the order Chiroptera and family Vespertilionidae. It is one of the smallest North American bats, often weighing as little as 3 to 4 grams (g) (0.11 to 0.14 ounces (oz)) (Harvey and Redman 2003, p. 10). Total body length is between 73 and 85 millimeters (mm) (2.87 and 3.35 inches (in)), and wingspan is between 212 and 248 mm (8.35 and 9.76 in) (Barbour and Davis 1969, p. 103; Erdle and Hobson 2001, p. 6; Amelon and Burhans 2006, p. 57). Defining characteristics include very small feet, measuring less than 8 mm (0.31 in) in adults, and a black facial mask and black ears that contrast with the bat's light-tan-to-dark-brown back fur (Barbour and Davis 1969, p. 103; Erdle and Hobson 2001, p. 6).

The eastern small-footed bat occurs from eastern Canada and New England south to Alabama and Georgia, and west to Oklahoma (Barbour and Davis 1969, p. 103). The species' range includes: Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia in the United States, and Ontario and Quebec in Canada. Eastern small-footed bats are considered rare because of their patchy distribution and generally low population numbers (Barbour and Davis 1969, p. 103). This species is most often detected during hibernation. About 125 hibernacula have been identified across the species' range, although most contain just a few individuals (Amelon and Burhans 2006, p. 61). Most documented occurrences of the species have been in New York, Pennsylvania, West Virginia, and Virginia (Amelon and Burhans 2006, p. 59). The eastern small-footed bat is State-listed as threatened in Pennsylvania because of an apparent population decline between the 1930s and the late 1970s (Felbaum *et al.* 1995, p. 24). From 1939 to 1944, more than 100 caves were surveyed in Pennsylvania and West Virginia, and out of these, eastern small-footed bats were observed at only 7 sites and totaled 363 individuals. In 1978 and 1979, the same seven caves were surveyed again and no eastern small-footed bats were observed (Felbaum *et al.* 1995, p. 24). Eastern small-footed bats are known to be susceptible to White-Nose Syndrome (WNS), and population declines (100 percent) were observed during surveys at Hailes Cave, New York, from 2005 to 2008, and these declines may be attributed to WNS (Hicks *et al.* 2008, p. 20).

Eastern small-footed bats overwinter in hibernacula that include caves and abandoned mines. In these hibernacula, they prefer locations close to the cave or mine entrance, where humidity is low and temperature fluctuations may be high relative to more interior areas (Barbour and Davis 1969, p. 104; Best and Jennings 1997, p. 3). Individuals often hibernate solitarily and have been found hibernating in rock crevices in cave or mine floors and beneath rocks within hibernacula (Barbour and Davis 1969, p. 104). Eastern small-footed bats have been observed hibernating in caves with big brown bats (*Eptesicus fuscus*), little brown bats (*Myotis lucifugus*), northern long-eared bats (*Myotis septentrionalis*), Indiana bats (*Myotis sodalis*), and tri-colored bats (*Perimyotis subflavus*). Male and female eastern small-footed bats inhabit the same hibernacula (Hitchcock 1965, pp. 6–8; Best and Jennings 1997, p. 3). Like most bat species, eastern small-footed bats exhibit high site fidelity to hibernacula, with individuals returning to the same site year after year (Gates *et al.* 1984, p. 166). Compared to other North American bat species, eastern small-footed bats are among the last to enter hibernacula and the first to emerge in the spring. Hibernation is approximately mid-November to March (Barbour and Davis 1969, p. 104).

In the summer months, eastern small-footed bats typically roost in talus (a slope of accumulated rock debris) areas associated with rocky ridge-tops, but they have also been found roosting on buildings and bridges and behind loose bark on trees (Barbour and Davis 1969, p. 103; MacGregor and Kiser 1998, p. 175; Amelon and Burhans 2006, p. 58; Chenger 2008, p. 10; Johnson *et al.* 2008, p. 29; Johnson and Gates 2008, p. 456). Roost sites may be at ground level in talus slopes, or in rock outcrops within shale barrens (Johnson *et al.* 2008, p. 29; Johnson and Gates 2008, p. 456). Both males and females change roost sites often, even daily; however, the reason for this frequent relocation is not known (Johnson *et al.* 2008, p. 29). Available data regarding the eastern small-footed bat suggest that females of this species form small colonies, with males roosting singly or in small groups (Erdle and Hobson 2001, p. 10). Eastern small-footed bats are known to migrate regionally. Three female eastern small-footed bats migrated 0.1 to 1.1 kilometer (km) (0.06 to 0.68 miles (mi)) from their winter hibernacula to rock outcrops within shale barren habitat (Johnson and Gates 2008, p. 456). The distance traveled is probably influenced by the availability of hibernacula and roosting sites across the landscape (Johnson and Gates 2008, p. 457).

Eastern small-footed bats are nocturnal foragers and primarily forage over streams, ponds, or other water bodies where concentrations of nocturnal insects are high (MacGregor and Kiser 1998, p. 175). Chenger (2008, pp. 10, 69–71) observed a female eastern small-footed bat foraging on three consecutive nights in June in a relatively small logged area on a hilltop, approximately 3.2 km (1.99 mi) from her talus-field diurnal (daytime) roost. He observed a second female eastern small-footed bat foraging in a predominantly forested area within 0.8 km (0.50 mi) of her talus-field diurnal roost. Eastern small-footed bats are dietary generalists and feed primarily on soft-bodied prey by hawking (capturing prey while in flight) and gleaning (capture of prey on any kind of substrate, or surface) (Moosman *et al.* 2007, p. 355 and p. 358).

Eastern small-footed bats are thought to be similar to sympatric *Myotis* that breed in the fall; spermatozoa are stored in the uterus of hibernating females until spring ovulation, and a single pup is born in May or June (Barbour and Davis 1969, p. 104; Amelon and Burhans 2006, p. 58). Adult longevity is estimated to be up to 12 years in the wild (Hitchcock 1965, p. 11). Mean annual survival rates are significantly lower for females than for males, 42.1 and 75.7 percent, respectively (Hitchcock *et al.,* 1984, p. 128). The lower rate of survival of females may be a result of a combination of factors: The greater demands of reproduction on females; the higher metabolic rates and longer sustained activity during the day in summer (*i.e.,* less time spent in daytime lethargy); and the greater exposure to possible disease-carrying

parasites in maternity colonies (Hitchcock *et al.* 1984, p. 127). Low survivorship and an evolutionary inability to compensate with a larger litter size may explain why eastern small-footed bats are generally uncommon (Hitchcock *et al.* 1984, p. 129).

Northern Long-Eared Bat

The northern long-eared bat (*Myotis septentrionalis*) is a member of the order Chiroptera and family Vespertilionidae. The northern long-eared bat was considered a subspecies of Keen's long-eared Myotis (*Myotis keenii),* but was recognized as a distinct species by van Zyll de Jong in 1979 (1979, p. 993, as cited in Caceres and Pybus 1997, p. 1); Nagorsen and Brigham (1993, p. 87); Whitaker and Mumford (2009, p. 207); and Simmons (2005, p. 516). No subspecies have been described for this species (Nagorsen and Brigham 1993, p. 90; Whitaker and Mumford 2009, p. 214). Thus, we accept the characterization of the northern long-eared bat as a distinct species of *Myotis.*

The northern long-eared bat is a medium-sized bat species with an average adult body weight of 5 to 8 g (0.18 to 0.28 oz) and average body length of 77 to 95 mm (3.03 to 3.74 in) (Caceres and Barclay 2000, p. 1). The northern long-eared bat is a relatively long-lived species, with ages up to 19 years recorded in the wild (Caceres and Pybus 1997, p. 4). It has medium to dark brown fur on its back, dark brown ears and wing membranes, and tawny-to-pale-brown fur on the ventral side (Nagorsen and Brigham 1993, p. 87; Whitaker and Mumford 2009, p. 207). This species is distinguished from other *Myotis* species by its large ears (average 17 mm (0.67 in), Whitaker and Mumford 2009, p. 207) that, when laid forward, extend (less than 5 mm (0.20 in)) beyond the muzzle (Caceres and Barclay 2000, p. 1). The tragus (a thin, cartilaginous structure attached to the base of the ear) is long and pointed (average 9 mm (0.35 in), Whitaker and Mumford 2009, p. 207), and often curved (Nagorsen and Brigham 1993, p. 87; Whitaker and Mumford 2009, p. 207). Females tend to be slightly larger and heavier than males (Caceres and Pybus 1997, p. 3).

The northern long-eared bat ranges across much of the eastern and north central United States, and all Canadian provinces west to the southern Northwest Territories and eastern British Columbia (Nagorsen and Brigham 1993, p. 89; Caceres and Pybus 1997, p. 1). However, in all these places, the species is patchily distributed and rarely found in large numbers (Barbour and Davis 1969, p. 77). The species' range includes: Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin (Center for Biological Diversity Petition (Petition, p. 6)). The petitioner notes that a small number of sightings have also been reported in Wyoming (Petition, p. 6). The species is considered rare in the northwestern part of its range (Nagorsen and Brigham 1993, p. 90; Caceres and Pybus 1997, p. 2) and in some southern States (Crnkovic 2003, p. 715).

Although summer roost habitat is defined variably across the species' range, its presence is generally correlated with old-growth forests composed of trees 100 years old or older (Caceres and Pybus 1997, p. 2; Petition, p. 7). The species is reliant on intact interior forest habitat, with low edge-to-interior ratios (Yates and Muzika 2006, p. 1245). Relevant late-successional forest features include a high percentage of old trees, uneven forest structure (resulting in multilayered vertical structure), single and multiple tree-fall gaps, standing snags, and woody debris (Krusic *et al.* 1996, p. 631; Leverett 2001, pp. 59–65). These late-successional forest characteristics may be favored for several reasons, including the large number of partially dead or decaying trees that the species uses for breeding, summer day roosting, and foraging (Krusic *et al.* 1996, p. 631; Caceres and Pybus 1997, p. 2; Waldien *et al.* 2000, pp. 793–794). Males typically roost singly and prefer coniferous trees in conifer-dominated stands, while females roost singly or in small groups, preferring shade-tolerant deciduous trees of mid-stage decay in mature stands (Broders and Forbes 2004, p. 606). Females may form small maternity colonies behind exfoliating bark, in tree snags, and in stumps, as well as in bat houses and behind building shutters (Waldien *et al.* 2000, pp. 793–794; Whitaker and Mumford 2009, p. 209). Females exhibit a high philopatry (tendency to return) to their natal sites (Arnold 2007, p. 375).

While the northern long-eared bat is not a migratory species, movements of the species between summer roost and winter hibernacula covering up to 56 km (34.8 mi) have been documented (Nagorsen and Brigham, 1993 p. 88). Northern long-eared bats may hibernate solitarily or in multispecies hibernacula, and are commonly found in caves or inactive mines, although they generally constitute less than 25 percent of the total number of individuals present in multispecies hibernacula (Barbour and Davis 1969, p. 77; Caceres and Pybus 1997, p. 1). The species appears to favor small cracks or crevices in cave ceilings, preferring cooler, higher humidity areas for hibernation than do many other *Myotis* species (Barbour and Davis 1969, p. 77; Whitaker and Mumford 2009, pp. 209–210). Hibernation during the winter months conserves energy by precluding the need for maintaining high body temperature when food is unavailable. To increase energy savings, individuals enter a state of torpor (a state of slowed body function used to conserve energy), where internal body temperature approaches ambient temperature, metabolic rates are significantly lowered, and all unnecessary movement is avoided (Thomas *et al.* 1990, p. 475; Thomas and Geiser 1997, p. 585; Caceres and Pybus 1997, p. 9). However, intercave movements are not uncommon: During winter periods, this species is known to break torpor briefly and fly outside the hibernacula on warm winter nights (Whitaker and Mumford 2009, pp. 208–211).

The northern long-eared bat is an opportunistic insectivore, using both hawking and gleaning to forage on a variety of small insects, including moths, flies, leafhoppers, and beetles (Nagorsen and Brigham 1993, p. 88). The species prefers forested hillsides and ridges, foraging at dusk over small ponds and forest clearings under the forest canopy (Nagorsen and Brigham 1993, p. 88) or along streams (Whitaker and Mumford 2009, p. 209). A study by Caceres and Pybus (1997, p. 2) suggests that mature forest stands play an important role in foraging behavior of northern long-eared bats.

The northern long-eared bat exhibits a delayed fertilization strategy, with mating taking place in late summer or early fall (Caceres and Pybus 1997, p. 4). The sperm is stored until the female emerges from hibernation in the spring, when ovulation and fertilization takes place. However, some individuals mate again in the spring (Racey 1979, p. 392 (in Racey 1982, p. 65); Racey 1982, pp. 72–73; Petition, p. 9). Females typically bear one offspring annually (Caceres and Pybus 1997, p. 4; Caceres and Barclay 2000, p. 2).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, reclassifying a species from endangered to threatened or from threatened to endangered on, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(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 considering what factors might constitute threats, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the subsequent status review, we attempt to determine how significant a threat it is. The threat is significant if it contributes to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the information in the Petition and our files is substantial. The information must include evidence sufficient to indicate that these factors may act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information presented in the Petition and located in our files regarding threats to the eastern small-footed bat and northern long-eared bat is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petitioner states that threats causing the present or threatened destruction, modification, or curtailment of eastern small-footed bat and northern long-eared bat habitat or range include agricultural and residential development; logging; oil, gas, and mineral development; wind energy development; and mine closures.

Agricultural and Residential Development

Information Provided in the Petition

The petitioner asserts that habitat loss, degradation, and fragmentation resulting from expansion of residential and agricultural development is a threat to eastern small-footed bat and northern long-eared bat populations, because habitat loss, degradation, and fragmentation increase the risks of reproductive decline, genetic isolation, changes in demography, and eventual changes in distribution, abundance, community diversity, and population viability (Petition, p. 14). Some of the highest rates of residential development in the conterminous United States are occurring in the ranges of eastern small-footed bat and northern long-eared bat (Brown *et al.* 2005, p. 1856). As residential development increases, habitat fragmentation and other anthropogenic elements increase, causing landscape-level effects (Smith and Wachob 2006, p. 437). As habitat patches are fragmented, the proportion of edge habitat (zone where adjacent habitat types meet) increases, which has been correlated with reduced occupancy of northern long-eared bats in forested habitat (Yates and Muzika 2006, p. 1243). The petitioner states that reduced connectivity between roosting and foraging habitats may increase the bats' energy expenditures and contribute to local population declines (Petition, p. 14). The petitioner states that industrial agriculture (characterized by large-scale monocropping and the use of abundant pesticides, fertilizers, and irrigation) can pollute soils and water and eradicate local insect populations, effectively excluding bats from their former habitats (Petition, p. 14).

Evaluation of Information Provided in the Petition and Available in Service Files

In general, we would expect that the loss, degradation, and fragmentation of eastern small-footed bat and northern long-eared bat habitat, particularly habitat in maternity, foraging, roosting, and hibernacula areas, would constitute a threat to local populations; however, we do not have any information in our files indicating loss of these habitats from residential or agricultural development. We find the information provided in the Petition does not present substantial scientific or commercial information that residential and agricultural development may be threats to the northern long-eared bat or the eastern small-footed bat. However, we will further investigate these activities for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

Logging

The petitioner asserts that the loss of forested habitat by logging threatens the eastern small-footed bat and northern long-eared bat (Petition, pp. 14–16). Logging affects bat populations through direct loss of roosting and foraging habitats and changes in forest structure and insect distribution and abundance (Hayes and Loeb 2007, pp. 207–235). The petitioner asserts that the most commonly employed silvicultural practices are incompatible with bat habitat conservation (Petition, p. 14). The petitioner states that there is evidence that northern long-eared bats prefer older forest stands because of their affinity for large-diameter trees and high snag density. In industrial forests under typical management practices, large-diameter snags may be absent (Wilhere 2003, p. 530). Older forests contain partially dead, decaying, and hollow trees and cavities that northern long-eared bats rely on for breeding habitat (Petition, p. 7). Large-scale commercial forestry within the ranges of the eastern small-footed bat and the northern long-eared bat is found primarily in New England's northern forest and in portions of the southeastern United States (Petition, p. 15). According to the petitioner, clearcutting is standard forestry practice in southeastern forests, and older forest stands are rare (Petition, p. 15; Trani 2002, p. 20).

Evaluation of Information Provided in the Petition and Available in Service Files

Mature forest stands provide important roosting and foraging habitat for northern long-eared bats (Caceres and Pybus 1997, p. 2). The felling of individual trees can cause direct mortality when roosting bats or maternity colonies are present. Because mature forests are often structurally diverse (*e.g.,* exfoliating bark, high snag density), they provide more roosting opportunities for forest-dwelling bats than do younger forests. Even-age timber management practices (*e.g.,* clearcutting, shelterwood harvests) lead to the loss, degradation, and fragmentation of mature forest habitat and, therefore, may have the potential to

adversely affect the northern long-eared bat. It is unclear whether logging is a threat to the eastern small-footed bat, since they are most often observed roosting in talus habitats; Chenger (2008, pp. 10, 69–71) found an eastern small-footed bat foraging in a small logged area. In summary, we find the information provided in the Petition and other information in our files present substantial scientific or commercial information indicating that logging may be a threat to the northern long-eared bat. We will further investigate this potential threat for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

Oil, Gas, and Mineral Development

The petitioner states that oil, gas, and mineral development, although localized, may pose a substantial threat to some bat populations, particularly in New York, Pennsylvania, Virginia, West Virginia, and Tennessee, where oil and gas reserves are greatest (Petition, p. 16). Eastern small-footed bats' reliance on loose shale, talus, or karst formations often found in oil-, gas-, and mineral-rich lands makes them especially vulnerable to habitat loss associated with natural resource exploitation (Amelon and Berhans 2006, p. 60). Natural gas extraction, particularly across the Marcellus Shale region, which includes large portions of New York, Pennsylvania, Ohio, and West Virginia, is expected to expand over the coming years. According to the petitioner, onsite impacts from natural gas drilling include clearing of forest or other habitat for the drill pad, road construction for access to the site, construction of containment ponds to hold waste (combination of water and proprietary chemicals) generated in the hydrofracking process (hydraulic fracturing of rock caused by drilling), and drilling and transport infrastructure for the extracted gas (Petition, pp. 16–17). Lastly, the petitioner discusses the effects of mountaintop removal, valley filling, and contaminant discharge associated with coal extraction (Petition, pp. 17–18). More than 12 million acres in Kentucky, West Virginia, Virginia, and Tennessee are currently affected and, within this area, nearly 6.8 percent of forested habitat has been lost to mountaintop removal and valley fills (Petition, p. 18).

Evaluation of Information Provided in the Petition and Available in Service Files

Large concentrations of gas wells and coal mines, and virtually the entire Marcellus Shale formation, fall within the eastern small-footed bat and northern long-eared bat ranges. The information provided by the petitioner supports the petitioner's claim that oil, gas, and mineral development may result in the loss or modification of eastern small-footed bat and northern long-eared bat habitat. In particular, activities that impact talus areas or mature forested habitats are potential threats to the eastern small-footed bat and northern long-eared bat, respectively. We find the information provided in the Petition presents substantial scientific or commercial information indicating that oil, gas, and mineral development may be a threat to the northern long-eared and eastern small-footed bats. We will further investigate these threats to habitat for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

Wind Energy Development

The petitioner states wind energy development may be a threat to the two species through loss of habitat and direct mortality from turbine operation (Petition, pp. 18–19). Bats are killed in significant numbers by utility-scale (greater than or equal to (≥) 0.33 megawatt (a unit of power equal to 1 million watts (MW)) wind turbines, with the greatest number of fatalities occurring along forested ridgetops in the eastern United States (Johnson 2005, p. 46; Arnett *et al.* 2008, p. 63). Northern long-eared bat fatalities have been reported at several wind energy facilities, but generally constitute a small fraction of total mortality (Kerns and Kerlinger 2004, p. 15; Johnson 2005, p. 45). The petitioner asserts, however, that low numbers of the northern long-eared bat are consistent with its relative representation in regional bat communities and should not be taken as an indication that this species is not susceptible to wind energy-related mortality (Petition, p. 19). There are no reports of eastern small-footed bat fatalities at wind energy facilities; however, mist-net surveys conducted in Pennsylvania revealed that this species was present within wind facility project areas (Capouillez and Mumma 2008, p. 19). Lastly, the petitioner states that because the eastern small-footed bat is associated with rocky ridgetop habitat, the species may be vulnerable to habitat loss caused by wind development in those areas (Petition, p. 19).

Evaluation of Information Provided in the Petition and Available in Service Files

Wind power development may constitute a threat to the eastern small-footed bat and northern long-eared bat. Eastern small-footed bats typically roost in talus areas which occur on ridgetops. In the Appalachian Mountains, these areas coincide with past, present, and anticipated future wind power development, exposing the species to both habitat loss due to project construction and the risk of mortality due to turbine operation. Although no mortality of eastern small-footed bats has been reported to date, mortality of northern long-eared bats has been reported (Kerns and Kerlinger 2004, p. 15; Johnson 2005, p. 45). Forest clearing associated with turbine and road construction might also threaten the northern long-eared bat, particularly if it occurs in mature forest habitat. We find that the information provided in the Petition and other information in our files present substantial scientific or commercial information indicating the petitioned action may be warranted due to wind power development. We will further investigate this threat to habitat for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

Mine Closures

The petitioner states abandoned mines serve as important habitat for many bat species and that although mine closures may be advisable for public safety, certain methods of closure can also exclude bats (Petition, p. 19). In a few reported instances, mines were closed when bats were hibernating and entire colonies were entombed (Tuttle and Taylor 1998, p. 8). Bat-compatible closures have been installed on Federal lands, but according to the petitioner, mines on non-Federal lands are still often closed improperly, and in some areas this may represent significant habitat loss to bats (Petition, p. 19).

Evaluation of Information Provided in the Petition and Available in Service Files

Mine closures have the potential to cause direct mortality to eastern small-footed and northern long-eared bats if they occur while bats are hibernating. Secondarily, because eastern small-footed bats and northern long-eared bats exhibit high site fidelity, mine closures conducted during non-hibernating periods would cause them to expend more energy finding new hibernacula during a time when stored fat reserves are critical to their winter survival. Lastly, modifications to mines and/or surrounding areas could change the airflow and alter microclimates, possibly eliminating their utility as hibernacula. In general, threats to the integrity of hibernacula have decreased

at sites harboring the Indiana bat since it was first listed as endangered (Service 2007, p. 74); however, it is unclear whether mines containing unlisted bat species are afforded adequate protections. We do not have information in our files documenting that mines supporting hibernating populations of eastern small-footed bats or northern long-eared bats are being closed. We find that the information provided in the Petition and other information in our files does not present substantial scientific or commercial information indicating the petitioned action may be warranted due to mine closures. However, we will further investigate the threat to habitat for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

Summary of Factor A

In summary, we find the information provided in the Petition and other information in our files presents substantial scientific or commercial information indicating that the continued existence of these two species may be threatened by habitat destruction, modification, or curtailment caused by logging (northern long-eared bat); oil, gas, and mineral development (eastern small-footed and northern long-eared bats); and wind energy development (eastern small-footed and northern long-eared bats). The information provided for agricultural and residential development and mine closures was not substantial. We will further investigate the threats to habitat for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner did not present information, nor do we have information in our files, suggesting that overutilization is affecting eastern small-footed bat or northern long-eared bat populations. However, we will further investigate whether overutilization for commercial, recreational, scientific, or educational purposes is a threat to the eastern small-footed bat and northern long-eared bats in our 12-month status reviews.

C. Disease or Predation

Information Provided in the Petition

The petitioner provides information indicating that the fungal disease known as White-Nose Syndrome (WNS) has become a deleterious pathogen responsible for unprecedented mortality in hibernating bats in the northeastern United States, including the northern long-eared and eastern small-footed species. Over the past 3 years, WNS has caused local declines approaching 100 percent in some populations, with an estimated loss exceeding 1 million bats (Gargas *et al.* 2009, p. 148; Kunz 2009, p. 2; Reichard and Kunz 2009, p. 457 [note that the petitioner cited this reference as Reichard *et al., in press* (Petition, p. 22), but we assume Reichard and Kunz (2009) is the referenced document]; Petition pp. 19–23). The pathogen has rapidly spread throughout the northeastern United States since its discovery in the winter of 2006–2007, affecting six species of insect-eating bats, including the northern long-eared and eastern small-footed (Blehert *et al.* 2009, p. 227; Reichard and Kunz 2009, p. 457). Since its initial discovery at 5 sites in eastern New York State in 2007 (Gargas *et al.* 2009, p. 147; Petition, p. 19), WNS has been documented in more than 60 hibernacula, as far as 805 km (500 mi) from the initial infection zone (Szymanski *et al.* 2009, p. 7). By the end of winter 2008–2009, WNS had spread to 37 counties in the States of Massachusetts, New Jersey, New York, Vermont, West Virginia, New Hampshire, Connecticut, Virginia, and Pennsylvania (Gargas *et al.* 2009, p. 147; Reichard and Kunz 2009, p. 457). WNS is linked to high mortality of several hibernating bat species (e.g., 81 to 97 percent mortality in hibernacula (Darling 2009, p. 3), up to 100 percent mortality in some populations (Kunz 2009, p. 1)), including the northern long-eared and eastern small-footed (Blehert *et al.* 2009, p. 227).

White-nose syndrome is associated with a previously unknown species of cold-loving fungus, *Geomyces destructans* (*G.d.*), which produces a skin infection among affected bats (Gargas *et al.* 2009, p. 152). The syndrome is characterized by the presence of profuse white fungal hyphae (thread-like filaments forming the vegetative part of a fungus) and conidia (non-motile spores) on the muzzle, ears, or wing membranes of hibernating bats (Gargas *et al.* 2009, pp. 148). *Geomyces destructans* penetrates the dermis (skin), eroding wing and ear tissue, and may extend hyphae into hair follicles and sebaceous glands (small glands in the skin that secrete an oily substance called sebum into hair follicles), yet the fungus does not typically lead to inflammation or immune response in the tissue (Blehert *et al.* 2009, p. 227; Gargas *et al.* 2009, p. 148; Petition, p. 20). This fungus grows optimally in low temperatures (5 to 14 °C (40 to 55 °F)) and high levels of humidity, conditions characteristic of winter bat hibernacula and ambient temperature of hibernating bats, thus potentially permitting year-round maintenance of this fungal species (Blehert *et al.* 2009, p. 227; Gargas *et al.* 2009, p. 153; U.S. Geological Survey (USGS) 2009, p. 2). This disease appears contagious. The fungus is transmitted from the environment to individual bats, from bat to bat when they are in close contact, as during hibernation, and likely from unintentional contamination from intercave movements by cavers or researchers (USGS 2009, p. 2). The pathogen's apparent expansion rate and the current radius of WNS infection are generally consistent with the annual range (distance between summer and winter habitat) of individual bats from known WNS-affected hibernacula, suggesting that the dispersal of infected bats is likely the primary vector for the continued spread of this disease (Hicks *et al.* 2008, p. 18; Reichard and Kunz 2009, p. 463).

It is not known with certainty if the fungal infection is the direct cause of mortality or the secondary effect of some undetected malady; however, infected bats have been observed exhibiting aberrant behaviors, including shifts of large numbers of bats in hibernacula to roosts near the entrances or unusually cold areas; large numbers of bats dispersing during the day from hibernacula, even during mid-winter; a general lack of responsiveness to human disturbance; and, on occasion, large numbers of fatalities, either inside the hibernacula, near the entrance, or in the immediate vicinity of the entrance (Boyles and Willis 2009, p. 93; Darling 2009, p. 2; Kunz 2009, pp. 3–4). Several factors may be responsible for the mortality associated with WNS, which is currently under investigation. First, WNS-affected bats exhibit wing damage with varying degrees of scarring, necrosis (death of cells or tissues through injury or disease, especially in a localized area of the body), and atrophy (wasting or decrease in size of a body organ, tissue, or part owing to disease, injury, or lack of use) of flight membranes, which may lead to reduced foraging success, leaving affected bats in poor condition as they prepare for hibernation in years after infection (Boyles and Willis 2009, p. 92; Reichard and Kunz 2009, p. 458). Bats with severe wing damage have been found to have significantly lower body mass than those with little or no WNS-induced wing damage, and this may also contribute to reproductive decline or failure (Petition, p. 22). Though some

reports indicate that mild scarring or tissue necrosis of wing membranes caused by normal foraging injuries may heal in less than 4 weeks, bacterial or fungal infection may delay this process (Reichard and Kunz 2009, pp. 462–463). A study by Reichard and Kunz (2009, p. 463) found that greater than 80 percent of little brown bats (*M. lucifugus*) affected by WNS and initially exhibiting light wing damage (see Reichard and Kunz 2009, p. 460, for wing damage ranking prioritization) had failed to improve after recapture. Since wing damage compromises flight maneuverability and foraging success, the reduced abundance of bats with moderate-to-severe wing damage as summer progressed may be due to death from starvation or increased predation risk (Reichard and Kunz 2009, p. 463). Although not specific to the northern long-eared or eastern small-footed bats, Darling (2009, pp. 2–3) noted that WNS-affected bats captured in May and June in Vermont showed substantial wing damage, which eventually leads to increased summer mortality.

Second, hibernating WNS-affected individuals may arouse from a state of torpor more frequently or for longer periods than normal, which prematurely expends stored fat reserves on which they rely for winter survival (Kunz 2009, p. 4; USGS 2009, p. 1). Healthy bats typically arouse from torpor every 13 to 15 days, but WNS-affected individuals have been observed to awake every 2 to 4 days (Youngbaer 2009, p. 3). Bats naturally arouse from torpor several times during hibernation to seek water, eliminate waste, and, if environmental conditions become unsuitable or if bats are physically disturbed, to make intracave and intercave movements (up to 200 km (124.3 mi)) (Caceres and Pybus 1997, p. 9; Whitaker and Mumford 2009, p. 211). However, arousal from torpor is energetically expensive, and chronic disturbance of hibernating bats is known to cause high rates of winter mortality through accelerated fat loss and starvation. Arousal from a state of torpor significantly increases the demand on limited energy stores as bats increase body temperature and metabolic rates (Caceres and Pybus 1997, p. 9). Further, bats typically do not have foraging opportunities to replace expended energy during winter months (Caceres and Pybus 1997, p. 9). For example, Thomas *et al.* (1990, p. 945) found little brown bats use an average of 108 milligrams (0.004 oz) of fat stores each time they arouse from torpor, which is energetically equivalent to 68 days of torpor. Arousals generally account for 80 to 90 percent of the energy expenditure in hibernating animals during the winter (Caceres and Pybus 1997, p. 9); thus, increased arousal frequency contributes to premature energy store depletion. The petitioner postulates that WNS-affected individuals are irritated by the fungal infection, which causes bats to break torpor more frequently to groom, or in hope of feeding (Petition, p. 22).

Lastly, WNS-affected individuals sampled in hibernacula have been found lacking chitinase (Petition, p. 21), an essential enzyme that remains active throughout the winter and allows for the breakdown of chitin, a primary component of insect exoskeletons (Whitaker *et al.* 2004, p. 17). During the winter months, chitin remaining in the bats' digestive tracts from the previous summer's foraging may provide supplementary energy and nutrients crucial to overwintering bats (Whitaker *et al.* 2004, p. 17; Whitaker and Mumford 2009, p. 210); therefore, the absence of chitinase in WNS-affected bats may contribute to the observed winter starvation (Petition, p. 21). These observations are of interest to the WNS research community, but the hypothesized connection to mortality is largely unsubstantiated.

At some sites, WNS-affected bats had poorer body condition (e.g., lower body-mass index (BMI) and less stored fat) in summer and winter, and were generally smaller throughout the reproductive period in 2008, when compared to data collected in 1975 (Kunz *et al.* 2008 as cited in the Petition, p. 21). This raises concerns that bats with WNS that survive the hibernation period will exhibit lower reproductive rates (Reichard and Kunz 2009, p. 458). If their flight abilities are compromised during the active season due to wing damage from the fungal infection, individuals are less likely to achieve sufficient energy and nutrient intake to sustain gestation and lactation (Reichard and Kunz 2009, p. 461). For instance, approximately 85 percent of female adult little brown bats in WNS-affected colonies were observed to be reproductively active in 2008, whereas past research has indicated that, in normal years, over 93 percent of females were reproductively active (Reichard and Kunz 2009, p. 462). The petitioner also notes major additional bat declines (more than 90 percent) observed at summer maternity colonies that were stable or growing before WNS, and pup mortality in the 2009 reproductive season was unusually high (Reynolds, pers. comm. as cited in the Petition, p. 23); however, the Petition did not specify which bat species or which locations exhibited a decline.

Although immune function is somewhat suppressed in all hibernating bats, there is evidence that WNS-affected bats have further reduced immune competence during hibernation (Kunz 2009, p. 4; Petition, pp. 21–22). In one study, WNS-affected individuals' innate immunity (basic resistance to disease, which is less energetically costly) seems to be unchanged or even slightly increased, whereas their adaptive immunity (more complex antigen-specific response, which is more energetically costly) was found to be significantly suppressed (Jacob and Reeder, unpublished data as cited in the Petition, p. 21); however, it is unclear whether the results of this study are typical. The Petitioner infers that this may suggest a reduced immune competence, although the immunological mechanisms behind these differences are not yet known (Petition, p. 21).

Evaluation of Information Provided in the Petition and Available in Service Files

We reviewed cited and referenced publications that were readily available in our files, and in general we find substantive information indicating that assertions made by the petitioner are accurate. In particular, Reichard and Kunz (2009), Blehert *et al.* (2009), and Gargas *et al.* (2009) identified substantial threats from WNS to multiple bat species, including the northern long-eared and eastern small-footed bats. Some commonly observed symptoms associated with WNS-affected bats include visible fungus on flight membranes, excessive or unexplained numbers of dead or dying bats at or near the hibernaculum, moderate-to-severe damage to wing membranes, and abnormal behavior (*e.g.,* population shift to entrance of the hibernaculum, decreased arousal with disturbance inside hibernaculum). A study by Reichard and Kunz (2009, p. 462) reveals an unexpectedly high prevalence of wing damage on little brown bats (*Myotis lucifugus*) within the range of WNS, although the authors note wing damage, low body mass, and decreased reproductive success may result from many possible factors, including WNS. Ultimately, these conditions may compromise flight ability and recruitment, and increase risk of starvation from repeated arousal from a state of torpor during hibernation and other life history events. Further, declines in reproduction by northern long-eared or eastern small-footed bats is a source of concern because of their

low reproductive rate (one offspring annually (Hitchcock *et al.* 1984, p. 128; Caceres and Pybus 1997, p. 4; Caceres and Barclay 2000, p. 2)), which makes recovery from potential population declines difficult.

Although the information cited in the Petition includes adverse impacts of WNS on other more abundant hibernating bat species, because the northern long-eared and eastern small-footed species have been documented as susceptible to WNS, it is reasonable for us to conclude similar effects to the petitioned species (Hicks *et al.* 2008, p. 21; Blehert *et al.* 2009, p. 227; Gargas *et al.* 2009, p. 148; Reichard and Kunz 2009, p. 457; Youngbaer 2009, p. 3). WNS has caused large-scale declines in many affected bat populations, including the northern long-eared and eastern small-footed species, with total estimated losses exceeding 1 million bats (Gargas *et al.* 2009, p. 148; Kunz 2009, p. 2). In New York State, WNS mortality rates from 2007 (first year monitored) ranged from 57 to 64 percent; in 2008, mortality rates rose to between 81 and 100 percent (Hicks *et al.* 2008, p. 19). Vermont has documented population declines of 95 percent at WNS-affected hibernacula (Darling 2009, p. 4). Mortality of northern long-eared and eastern small-footed bats linked to WNS has occurred across portions of their ranges (Gargas *et al.* 2009, p. 148). The confirmation of WNS across large portions of the eastern small-footed bat's range and eastern sections of the northern long-eared bat's range (Szymanski *et al.* 2009, p. 47), along with the historical and anticipated future rate of WNS spread, indicate that WNS may have the potential to negatively impact large portions of the petitioned species' ranges in the near future.

The Service is leading a cooperative effort with Federal and State agencies, Tribes, researchers, universities and other nongovernment organizations to research and manage the spread of WNS. The Service issued an advisory calling for a voluntary moratorium on all caving activity in States known to have hibernacula affected by WNS, as well as caving activity in all adjoining States, unless conducted as part of an agency-sanctioned research or monitoring project (Service 2009b). This advisory is not a regulatory mechanism. Several States, including Missouri, Iowa, and Illinois, have now closed all State-owned hibernacula to human entry, but entry to hibernacula on private lands remains at the landowners' discretion.

We find the Petition and other information in our files present substantial information indicating that WNS may be a threat to the northern long-eared bat and the eastern small-footed bat. We will further investigate this threat to both the northern long-eared and eastern small-footed bats, as well as ongoing conservation efforts to manage the threat, in our 12-month status reviews.

D. The Inadequacy of Existing Regulatory Mechanisms

According to the petitioner, existing regulatory mechanisms do not adequately protect eastern small-footed bats or northern long-eared bats from the variety of threats discussed in the petition (Petition, pp. 28–38). The petitioner discusses inadequate regulations governing private, State, and Federal lands, and inadequate oversight by State and Federal agencies for impacts related to development, forestry, wind energy development, and oil, gas, and mineral extraction. Lastly, the petitioner asserts that the management of WNS by State and Federal agencies is inadequate.

Information Provided in the Petition

Private lands constitute approximately 90 percent of the total land area within the ranges of the eastern small-footed bat and northern long-eared bat, and regulation of activities on these lands that degrade or destroy habitat is minimal (Petition, p. 29). In addition, a substantial number of bat hibernacula occur on private lands, and although the Federal Cave Resources Protection Act of 1988 affords protection to caves on federally owned lands, it does not protect caves on private lands (Petition, p. 32).

The petitioner states that State-owned lands constitute approximately 5 percent of the total land area within the ranges of the eastern small-footed bat and northern long-eared bat (Petition, p. 33). The petitioner states that the eastern small-footed bat is State-listed as endangered in New Hampshire, threatened in Vermont and Pennsylvania, and is a species of special concern in Connecticut, Massachusetts, Maryland, Missouri, North Carolina, New Jersey, New York, Ohio, Oklahoma, Tennessee, Virginia, West Virginia, and Georgia. The petitioner states that the northern long-eared bat is a candidate for State-listing in Pennsylvania and is a species of special concern in Missouri and Montana. The petitioner asserts, however, that protections afforded by State-listing are narrow. Most State endangered species laws protect against trade or possession of any State-listed species but make no provisions against habitat destruction (Petition, p. 33). According to the petitioner, threats with inadequate regulatory mechanisms on State lands include oil, gas, and mineral extraction; timber management; and wind energy development (Petition, pp. 33–35). Lastly, the petitioner asserts that although most States have laws protecting caves and cave-dwelling species, enforcement of regulations is variable (Petition, p. 35).

Between 4 and 6 percent of the total land area within the ranges of the eastern small-footed bat and northern long-eared bat are federally owned, and most of these lands are National Forest lands managed by the U.S. Forest Service. Land and Resource Management Plans written for each National Forest contain provisions to protect federally listed bat species (*e.g.,* buffer zones around hibernacula and maternity sites, restricted access to caves, snag retention); however, generally no provisions are included for the protection of non-federally listed species (Petition, pp. 29–30). A species designated as sensitive, however, is entitled to impact analysis on proposed actions pursuant to the National Environmental Policy Act, although if adverse effects are expected, there is no requirement for the selection of a benign alternative action, monitoring, or mitigation for that species (Petition, p. 31).

The petitioner asserts that regulations governing oil, gas, and mineral extraction on Federal lands are wholly inadequate for the protection of eastern small-footed bats and northern long-eared bats, particularly in split-estate situations (Petition, pp. 31–32). In split-estate situations, the rights to minerals occurring beneath Federal lands are privately owned. In these cases, bat populations presumably protected by the domain of Federal agencies and environmental regulations may be threatened by drilling or mining activities on privately held subsurface estates (Petition, p. 31). The petitioner also asserts that economic considerations consistently take precedence over species protections, and cites the Service as having said that in nearly all cases where there has been a conflict between endangered species and a mining project, the project has been permitted with only minor modifications (Service 1997, p. 1651). Lastly, the petitioner states that there is little oversight by the Office of Surface Mining on post-mining reclamation once a permit has been issued, even though wildlife habitat is cited as the predominant post-mining land use (Petition, p. 32).

The petitioner states that Federal oversight of wind energy development

is limited. While the Service may recommend pre- and post-construction surveys, developers are not required to engage in any pre-construction surveying, monitoring, or mitigation unless a federally listed endangered species is present (Petition, pp. 32–33).

The petitioner asserts that regulatory mechanisms are inadequate for the management of WNS. On September 8, 2009, a draft framework for a plan to assist States, Federal agencies, and Tribes in managing WNS in bats was prepared. The framework provides an overview of the expected plan content that will guide future activities responding to WNS (Service 2009a). The petitioner takes several issues with the plan, including concerns over the lack of funding for implementing the plan, but most important, asserts that the plan will not provide adequate legal authority for the protection of non-federally listed species (Petition, p. 36).

Evaluation of Information Provided in the Petition and Available in Service Files

The eastern small-footed bat is State-listed as threatened, endangered, or a species of special concern throughout the majority of its range, and the northern long-eared bat is State-listed or proposed for listing in several States, including in areas affected by WNS. Regulatory protections for State-listed species vary by individual States, but, in general, State-listed species do not receive the same avoidance, minimization, compensation, or monitoring measures as those afforded to federally listed species.

Although some non-listed bat species such as the eastern small-footed bat and northern long-eared bat may receive ancillary benefits from operational changes meant to provide conservation benefits for listed bat species at wind power projects, this assumption is speculative. Federal oversight of wind power projects is limited, and therefore, the threat of direct take or habitat loss from these projects may be inadequately regulated.

The petitioner asserts that regulatory mechanisms are inadequate for the management of WNS. There are no existing regulatory mechanisms specifically designed to regulate the spread of fungal diseases such as *G. destructans* associated with WNS. Therefore, there are no regulations to analyze for adequacy of addressing the threat of WNS. The Service discusses nonregulatory management strategies for addressing WNS under Factor C above.

We find the information provided in the Petition and other information in our files present substantial scientific or commercial information indicating that the inadequacy of existing regulatory mechanisms to manage the impacts of forestry; wind energy development; and, oil, gas, and mineral extraction may be a threat to the northern long-eared bat and the eastern small-footed bat. As explained above in Factor A, we find the information provided for agricultural and residential development to be not substantial, therefore, there is no substantial information on the inadequacy of existing regulatory mechanisms associated with those activities. We will further investigate the adequacy of existing regulatory mechanisms for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioner states that other natural or manmade factors affecting the continued existence of eastern small-footed bats and northern long-eared bats include environmental contaminants, climate change, disturbance at hibernacula or maternity roosts, and prescribed burning.

Environmental Contaminants

Information Provided in the Petition

The petitioner asserts that environmental contaminants may pose a threat to bat populations (Petition, p. 23–26). Bat species with long lifespans, such as the northern long-eared bat (up to 19 years) and eastern small-footed bat (up to 11 years), have more time to come in contact with, and therefore bioaccumulate, insecticides and other toxic pollutants (Clark and Shore 2001, p. 166). For example, substantial wildlife mortality has been linked to contaminate leaching and spills, with bats often disproportionately affected (Eisler and Wiemeyer 2004, p. 48).

The petitioner states that mercury is a neurotoxin linked to adverse health effects in mammals, including reduced immune function, impaired function of the central nervous system, and compromised reproductive ability, and that cyanide can cause mortality due to asphyxiation (Petition, p. 24). The petitioner refers to a study by Schweiger *et al.* (2006, Petition, p. 24) that provides evidence that insectivores, such as bats, are affected by high levels of mercury in the environment. Elevated levels of mercury have been documented in bats, including the northern long-eared, in the States of Virginia, Arkansas, and Kentucky (Yates and Evers 2006; Massa and Grippo 1999; Clark *et al.* 2007; all as cited in the Petition, p. 24). In the northeastern United States, mercury-sensitive areas include forested regions with shallow surficial (occurring on or near the surface of the earth) materials, abundant wetlands, and low-productivity surface waters (Driscoll *et al.* 2007, p. 2).

Cyanide solutions from mining operations are typically stored in sludge ponds or heaps, where animals may be attracted to drink (O'Shea *et al.* 2000, p. 206). However, cyanide does not biomagnify (increase in concentration of a substance in the tissue of organisms at successively higher levels of the food chain) or persist in ecosystems, and sublethal doses may be ingested without apparent detrimental harm (O'Shea *et al.* 2000, p. 206; Eisler *et al.* 1999 as cited in the Petition, p. 24).

Contemporary classes of pesticides (*e.g.,* organophosphates, pyrethroids, neonicotinoides) are suggested to have sublethal to lethal effects on many bat populations. Some pesticides, such as organochlorine, may persist in the environment, accumulate in food chains, and affect insectivores, such as bats (Clark *et al.* 1980, p. 138; Clark and Shore 2001, p. 157). A small sample of northern long-eared and federally endangered Indiana bat carcasses tested positive for organophosphates, raising concern regarding their link to mortality (Sparks 2006, p. 3). During extreme fat depletion while in hibernation, accumulated contaminants in fat stores risk mobilization, which can prove lethal (Clark and Shore 2001, pp. 166, 177–178; Secord *et al.* 2009, p. 2). Sublethal doses may also affect thermoregulation, reproduction, immune function, motor coordination, metabolic rates, and foraging behavior (Clark and Shore 2001, pp. 172, 177; Swanepoel *et al.* 1999, p. 175; Petition, p. 25). Thus, a sublethal dose that compromises motor coordination may reduce foraging efficiency for a few hours or days, and could cause starvation-related mortality (Sparks 2006, p. 6). Pesticide use may also influence the abundance and diversity of local insect prey resources (Wickramasinghe *et al.* 2004, p. 1289).

Evaluation of Information Provided in the Petition and Available in Service Files

There is considerable uncertainty regarding adverse impacts to northern long-eared and eastern small-footed bats from pesticides and other potential contaminants. Undetermined mortality cases of individual northern long-eared bats, which seem to have a toxicological implication, have been recorded (Sparks 2006, p. 3). Additional suspected bat

mortalities from organochlorine pesticide exposure were documented in the late 1970s and 1980s in several Missouri caves (Service 2007, p. 93). Eight Mexican free-tailed bats were also found dead under a bat house near a pond that had recently been treated with Diquat® (Service 2007, p. 100).

Although environmental contaminants may adversely impact northern long-eared and eastern small-footed bats, the petitioner did not provide the referenced information for some citations used in the Petition, and therefore, we were unable to locate or substantiate claims from these reported sources. In addition, information in our files is not sufficient to establish that environmental contaminants may be a threat to the eastern small-footed or northern long-eared bats. We have no readily available information indicating that species-level impacts are occurring from potential pesticide or other contaminant use throughout the range of the northern long-eared and eastern small-footed bats. Therefore, we find that the Petition does not present substantial information for this factor. We will, however, further investigate this factor for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

Climate Change

Information Provided in the Petition

The petitioner asserts that climate change will likely impact northern long-eared and eastern small-footed bats (Petition, p. 26). Climate change is expected to alter seasonal ambient temperatures and precipitation patterns across regions (Adams and Hayes 2008, p. 1115), which may affect insect prey distribution, abundance, and phenology (life cycle events influenced by seasonal and interannual variation in climate) (Bale *et al.* 2002, p. 11). In addition, Northeast winters within the ranges of the eastern small-footed bat and northern long-eared bat are projected to become shorter in duration and warmer, with more frequent freeze and thaw cycles (Gu *et al.* 2008, p. 261).

Although milder winter conditions may permit bats to enter hibernacula later than usual, declining availability of late-fall food resources may decrease individual fat reserves available for overwinter survival (Petition, p. 26). Moreover, warmer or more variable winter temperatures may cause bats to break torpor more frequently during hibernation (Petition, p. 26), sharply increasing energy demands on limited fat reserves as they increase body temperature and metabolic rates (Humphries *et al.* 2002, p. 315). Eastern small-footed bats often hibernate in areas more susceptible to temperature fluctuations, such as small rock crevices, under rock slabs, or in other microhabitats, which may make them more susceptible to arousal and energy depletion (Rodenhouse *et al.* 2009, p. 251). Warmer winter temperatures may also disrupt bat reproductive physiology. In captivity, spermatozoa stored in the female reproductive tract lose their viability if suitable hibernation conditions are not maintained. If unsuitable hibernation conditions similarly affect individuals in the wild, reproductive success may become diminished (Jones *et al.* 2009, p. 7).

Evaluation of Information Provided in the Petition and Available in Service Files

Projections of climate change impacts to the northern long-eared bat and eastern small-footed bats are speculative. Information in the Petition and in our files is not sufficient to establish that climate change may be a threat to the eastern small-footed or northern long-eared bats. Therefore, we find that the Petition does not present substantial information for this factor. We will, however, further investigate this factor for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

Disturbance at Hibernacula or Maternity Roosts

Information Provided in the Petition

The petitioner asserts that disturbance at hibernacula and maternity roosts may negatively affect the northern long-eared bat and eastern small-footed bat (Petition, pp. 26–27). Bat hibernacula and maternity roost locations are frequently used for recreational, commercial, and scientific activities (*e.g.,* caving, rock climbing, mineral extraction, and research), which may increase disturbance frequency (Petition, pp. 26–27). Disturbance of winter hibernacula can increase arousal from a state of torpor, which is energetically expensive and known to cause high rates of winter mortality through accelerated fat loss and starvation (see Factor C above). Increased arousal, therefore, may lead to an increased risk of premature energy store depletion and starvation.

The petitioner asserts that eastern small-footed bat maternity roosts may be at risk from recreational disturbance (*e.g.,* rock climbing) as colonies have been found under exposed rocks on open ridges, outcrops, and cliff faces (Erdle and Hobson 2001, p. 6; Petition, p. 27). In addition, the petitioner notes increased developmental pressures to convert abandoned railway tunnels for recreational uses, such as bicycle trails. For example, the proposed development of the abandoned Indigo Tunnel in Maryland to a bicycle trail would potentially affect the third largest eastern small-footed bat hibernating population, the largest population as yet unaffected by WNS (Petition, p. 27).

Vandalism is also known to be a major issue at some hibernacula (Tuttle 1979, p. 3). According to the Petition, intentional harm to bat colonies is a common occurrence; Tuttle (1979, p. 3) reports researchers finding sticks, rocks, spent shotgun and rifle shells, fireworks fragments, and smoke stains on cave ceilings at many caves. Intentional killing of bats at both commercial and noncommercial caves by clubbing, stoning, burning, shooting, and other means is well documented as a cause of substantial bat mortality (Tuttle 1979, pp. 7–8). Concerns about public health and the transmission of rabies, contamination of homes or other buildings by guano, and the general stigma associated with bats inspire many attempts to eradicate bats from both natural habitat and human structures (Tuttle 1979, p. 8).

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioner cites several publications to support assertions made in the Petition; however, the petitioner does not include reference information for some citations (such as Greenhall 1973, and Trombulak *et al.* 2001), and we are unable to locate or substantiate claims from these reported sources. However, in general, we would expect that destruction of or disturbance to habitat, particularly habitat required for maternity use, roosting, and hibernation, may impact local populations.

We reviewed cited and referenced publications that are readily available in our files, and we find this information suggests the assertions made by the petitioner are accurate. In particular, Caceres and Pybus (1997), Tuttle (1979), and Thomas *et al.* (1990) identified threats from disturbance and vandalism of hibernacula by human activities. The repeated arousal from a state of torpor due to human disturbance likely increases the energy demands made of hibernating northern long-eared bats, which forces individuals to expend limited energy stores and may affect overwinter viability and other life history events. Disturbance of northern long-eared and eastern small-footed bat

roosts and hibernacula from human activities and development has occurred (Petition, p. 17) and is likely to continue in the future. Therefore, we find the Petition and other information in our files present substantial information indicating that disturbance or vandalism to maternity roosts and winter hibernacula may be threats to the northern long-eared bat and the eastern small-footed bat.

Prescribed Burning of Forested Understory Habitats

Information Provided in the Petition

The petitioner asserts prescribed burns of forested understory habitats may negatively impact bat species through habitat loss or adverse effects of smoke, especially in the southeastern United States in the winter season, although most impacts to bat populations due to burns are poorly documented or researched (Carter *et al.* 2000, p. 139; Petition, p. 28). The prescribed burns may destroy snags in mid to late stages of decay, which otherwise would provide suitable bat roosts (Carter *et al.* 2000, p. 139; Horton and Mannan 1988, p. 41). Although burns may destroy current roost habitat, most bat species use multiple forest roosts, are able to fly at speeds that should allow for their escape, and are able to carry their young for short distances, all of which may mitigate threats caused by the burn (Carter *et al.* 2000, p. 140). In addition, prescribed burns may create beneficial snag habitat (although newly created snags may not be immediately useable for roosting), may modify or improve foraging habitat, and may increase arthropod abundance (Carter *et al.* 2000, p. 139).

Winter burns that create smoke upwind from a cave's breathing entrance could fill the cave with smoke, potentially disturbing or killing cave-hibernating bat species (Carter *et al.* 2000, p. 141; Petition, p. 28). Summer burns may adversely impact eastern small-footed bat roost habitat, which is often located in fire-prone or fire-reliant plant communities (Carter *et al.* 2000, p. 141).

Evaluation of Information Provided in the Petition and Available in Service Files

Although it has been theorized that prescribed burns of forested understory habitat may adversely impact northern long-eared and eastern small-footed bats, the Petition and information in our files do not present substantial information indicating that prescribed burning may be a threat to the northern long-eared bat and the eastern small-footed bat. Prescribed burns may destroy existing roost habitat, create beneficial snag habitat, or modify or improve foraging habitat at a local scale. However, the potential impacts to bat populations due to burns are poorly documented or researched. We will, however, further investigate prescribed burning as a threat for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

Summary of Factor E

In summary, we find the Petition and other information in our files presents substantial information indicating the present or threatened disturbance of summer roosts and winter hibernacula by recreational activities and vandalism may be threats to the northern long-eared bat and the eastern small-footed bat. The Petition and other information in our files do not present substantial information indicating that environmental contaminants, climate change, and prescribed burns may be threats to the northern long-eared bat and the eastern small-footed bat. We will, however, further investigate these factors for both the northern long-eared and eastern small-footed bats in our 12-month status reviews.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the Petition presents substantial scientific or commercial information indicating that listing the eastern small-footed bat and the northern long-eared bat throughout their entire ranges may be warranted. Information in the Petition and in our files indicates that the continued existence of these two species may be threatened by destruction, modification, or curtailment of habitat from logging (northern long-eared bat); oil, gas, and mineral development (eastern small-footed and northern long-eared bats); and wind energy development (eastern small-footed and northern long-eared bats) (Factor A); WNS (eastern small-footed and northern long-eared bats) (Factor C); inadequacy of existing regulatory mechanisms for impacts related to development; forestry; wind energy development; and oil, gas, and mineral extraction (eastern small-footed and northern long-eared bats) (Factor D); and other natural or manmade factors such as disturbance at hibernacula and maternity roosts by recreational activities or vandalism (eastern small-footed and northern long-eared bats) (Factor E). The Petitioner does not present substantial information that the eastern small-footed bat and northern long-eared bat are threatened by overutilization for commercial, recreational, scientific, or educational purposes (Factor B). Because we have found that the Petition presents substantial information indicating that listing the eastern small-footed bat and northern long-eared bat may be warranted, we are initiating a status review for both species to determine whether listing either of these species or both of these species under the Act is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a ''substantial'' 90-day finding. Because the status review may provide additional information, and because the Act's standards for 90-day and 12-month findings are different, as described above, a ''substantial'' 90-day finding does not mean that the status review will result in a ''warranted'' finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Pennsylvania Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Pennsylvania Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 26, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–16344 Filed 6–28–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110520295–1295–01]

RIN 0648–BA64

Atlantic Highly Migratory Species; Vessel Monitoring Systems; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: The National Marine Fisheries Service (NMFS) published a proposed rule in the **Federal Register** of June 21, 2011, concerning modifications to Vessel Monitoring System requirements in Atlantic HMS fisheries. The document contained an incorrect time for a public hearing in Atlantic City, New Jersey. This document corrects that error. All other information contained in the proposed rule has not been changed.

FOR FURTHER INFORMATION CONTACT: Greg Fairclough, (*phone:* 727–824–5399, *fax:* 727–824–5398) or Michael Clark (*phone:* 301–713–2347, *fax:* 301–713–1917).

Correction

In the **Federal Register** of June 21, 2011, in FR Doc 2011–15325, on page 36073, the third row of the table is corrected to read:

Location	Date	Time	Address
* * * * * * *			
Atlantic City, NJ	July 28, 2011	3:30–6:30 p.m.	Atlantic County Library System, Brigantine Branch, 201 15th St. South, Brigantine, NJ 08203.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: June 24, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2011–16331 Filed 6–28–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 125
Wednesday, June 29, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to P & M Signs, Inc. of Mountainair, New Mexico, an exclusive license to the Federal Government's rights in U.S. Patent No. 6,586,504, ''*Wood And Plastic Composite Material And Methods For Making Same'',* issued on July 1, 2003.

DATES: Comments must be received on or before July 29, 2011.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The patent rights in this invention are co-owned by the United States of America, as represented by the Secretary of Agriculture, and P & M Signs, Inc. of Mountainair, New Mexico. The prospective exclusive license will grant to the co-owner, P & M Signs, Inc., an exclusive license to the Federal Government's patent rights. It is in the public interest to so license this invention as P & M Signs, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2011–16250 Filed 6–28–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Request for Public Comments for Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Local Agency Recognition of Exemplary Breastfeeding Support Practices

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of request for comments.

SUMMARY: This notice announces a request for public comments on the approach for selecting and awarding local agencies for excellence in WIC breastfeeding services and support. Section 231 of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, requires that the U.S. Department of Agriculture (USDA) establish a program to recognize WIC local agencies and clinics that demonstrate exemplary breastfeeding promotion and support activities. USDA believes that public input on the development of the recognition program would be beneficial.

DATES: Comments must be received on or before August 29, 2011.

ADDRESSES: Comments may be submitted by any of the following methods: *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow online instructions for submitting comments electronically.

Mail: Address comments to: Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, VA 22302.

Respondents are strongly encouraged to submit comments through *http://www.regulations.gov,* as it will simplify the review of their input and help to ensure that it receives full consideration. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. All comments will be made available publicly on the internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sandra Clark, Chief, Nutrition Services Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, VA 22302. (703) 305–2746.

SUPPLEMENTARY INFORMATION:

I. Background

Historically, the WIC Program has promoted breastfeeding as the optimal method of infant feeding, unless medically contraindicated. Breastfeeding promotion and support is a critical component of the services the WIC Program provides to pregnant and postpartum participants. As evidence has grown surrounding the importance of breastfeeding to the health of mothers and babies, WIC has further expanded initiatives to reinforce these activities as a priority for the WIC Program. WIC's recent efforts surrounding breastfeeding promotion and support include changing the WIC food packages to provide enhanced packages for fully breastfeeding mothers, expanding the WIC Peer Counselor Program, and establishing WIC Breastfeeding Performance Bonus awards to State agencies. This local agency recognition program will complement these and other Food and Nutrition Service (FNS) initiatives currently underway that seek to promote and increase breastfeeding among WIC participants. It will also complement other Federal initiatives, such as the Department of Health and Human Services (DHHS)-led initiative, The Surgeon General's Call to Action to Support Breastfeeding, as well as the recent requirement in the Patient Protection and Healthcare Reform Act (Pub. L. 111–148), that became effective in 2010, that most employers provide a reasonable break time for breastfeeding mothers. All of these initiatives work towards the common goal to meet national objectives specified in the recently released DHHS Healthy People 2020, which includes an expansion of

the previously established 2010 breastfeeding objectives.

While all WIC local agencies are required to implement policies and procedures to provide breastfeeding support and assistance throughout the prenatal and postpartum period, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) requires USDA to implement a program to recognize exemplary breastfeeding support practices at WIC local agencies and clinics. This program is expected to provide models and motivate other local agencies and clinics to strengthen their breastfeeding promotion and support activities. The HHFKA also authorizes the appropriation of funds for this local agency recognition program.

USDA plans to begin recognizing exemplary agencies and clinics during fiscal year 2012. Awards may be monetary or non-monetary, based on the availability of funds. USDA will develop and implement this recognition program through careful consideration of information from existing recognition and incentive programs, key stakeholder input, and public comments to develop recognition award criteria and application procedures.

II. Key Issues on Which Public Comment is Requested

In recognizing exemplary local agencies and clinics, the HHFKA requires that the Secretary consider:

(1) Performance measurements of breastfeeding;

(2) The effectiveness of a peer counselor program;

(3) The extent to which the agency or clinic has partnered with other entities to build a supportive breastfeeding environment for women participating in WIC; and

(4) Other criteria the Secretary considers appropriate after consultation with State and local program agencies.

This notice serves as one means of consulting with State and local agencies and the general public. FNS would like comments on the criteria for the recognition, specifically:

(1) What additional elements should FNS consider as a component of the selection criteria for this local agency recognition program?

(2) What sources of data or information are available to support this recognition process?

Dated: June 23, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–16289 Filed 6–28–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition: Notice of Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, section 1, *et seq.,* 5 U.S.C. App., this notice announces a meeting of the National Advisory Council on Maternal, Infant and Fetal Nutrition.

DATES: *Date and Time:* July 19–21, 2011; 9 a.m.–5:30 p.m.

Place: The meeting will be held at the Food and Nutrition Service, 3101 Park Center Drive, Room 204 A & B, Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Maternal, Infant, and Fetal Nutrition will meet to continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and the Commodity Supplemental Food Program (CFSP). The agenda will include updates and a discussion of WIC Reauthorization, Breastfeeding Promotion, the new WIC food packages, WIC funding, Electronic Benefits Transfer, CSFP Farm Bill provisions, and current research studies.

Status: Meetings of the National Advisory Council on Maternal, Infant and Fetal Nutrition are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below before or after the meeting.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, (703) 305–2746. If members of the public need special accommodations, please notify Anita Cunningham by July 13, 2011, at (703) 305–0986, or e-mail at *Anita.Cunningham@fns.usda.gov.*

Dated: June 21, 2011.

Audrey Rowe,

Administrator.

[FR Doc. 2011–16287 Filed 6–28–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Allegheny Resource Advisory Committee will meet in Marienville, Pennsylvania. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review project proposals received and prepare for the final review and prioritization of projects to occur at the September meeting.

DATES: The meeting will be held July 13, 2011, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Marienville Ranger District Office, 131 Smokey Lane, Marienville, Pennsylvania. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 4 Farm Colony Drive, Warren, Pennsylvania 16365. Please call ahead to Kathy Mohney at (814) 728–6298 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kathy Mohney, RAC Coordinator, Allegheny National Forest Supervisor's Office, 4 Farm Colony Drive, Warren, Pennsylvania 16365, phone (814) 728–6298, or e-mail *kmohney@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or procedings may be made by contacting the person listed in **FOR FURTHER INFORMATION**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review project proposals received and prepare for the final review and prioritization of projects to occur at the September meeting.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by July 11, 2011, to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 4 Farm Colony Drive, Warren, Pennsylvania 16365, or by e-mail to *kmohney@fs.fed.us,* or via facsimile to (814) 726–1462.

Dated: June 23, 2011.

Lois DeMarco,

Acting Forest Supervisor.

[FR Doc. 2011–16264 Filed 6–28–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Resume the Agricultural Labor Survey and Farm Labor Reports.

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of resumption of data information collection and publication.

SUMMARY: This notice announces the intention of the National Agricultural Statistics Service (NASS) to resume a currently approved information collection, the Agricultural Labor Survey, and its associated publication.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Labor Survey.

OMB Control Number: 0535–0109.

Expiration Date of Approval: November 30, 2012.

Type of Request: To resume a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Agricultural Labor Survey provides quarterly statistics on the number of agricultural workers, hours worked, and wage rates. Number of workers and hours worked are used to estimate agricultural productivity; wage rates are used in the administration of the H–2A Program and for setting Adverse Effect Wage Rates. Survey data are also used to carry out provisions of the Agricultural Adjustment Act. This collection was suspended on May 18, 2011 due to budget constraints. As a result of reimbursable funding, NASS will resume this information collection as of July 2011.

Authority: These data are collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Signed at Washington, DC, June 8, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2011–16249 Filed 6–28–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of Small, Socially-Disadvantaged Producer Grant (SSDPG) Application Deadlines in Fiscal Year 2011

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of funding availability.

SUMMARY: The Rural Business-Cooperative Service is seeking applications for the SSDPG program pursuant to section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932). As provided in the Department of Defense and Full-Year Continuing Appropriations Act of 2011 (H.R. 1473), approximately $3.456 million in competitive grant funds is available. USDA Rural Development Cooperative Programs hereby requests proposals from eligible cooperatives and associations of cooperatives for a competitively awarded grant to fund technical assistance to small, socially-disadvantaged agricultural producers in rural areas. The maximum award per grant is $200,000.

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 August 15, 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 August 15, 2011, to be eligible for FY 2011 grant funding. Late applications will not eligible for FY 2011 grant funding.

ADDRESSES: Application materials for the SSDPG program may be obtained at *http://www.rurdev.usda.gov/BCP_SSDPG.html* or by contacting the applicant's USDA Rural Development State Office. Contact information for State Offices can be found at *http://www.rurdev.usda.gov/recd_map.html.*

Paper applications must be submitted to the USDA Rural Development State Office where the applicant is located. Electronic applications must be submitted through the Grants.gov Web site 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_SSDPG.html* for application assistance or contact a USDA Rural Development State Office. Applicants are strongly 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: USDA Rural Business Cooperative Service.

Funding Opportunity Title: Small, Socially-Disadvantaged Producer 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 August 15, 2011, to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

Complete electronic copies must be received by August 15, 2011, to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

I. Funding Opportunity Description

Formerly known as the Small, Minority Producer Grant Program, the primary objective of the SSDPG program is to provide technical assistance to small, socially-disadvantaged agricultural producers through eligible cooperatives and associations of cooperatives. Grants are awarded on a competitive basis. The maximum award amount per grant is $200,000.

Definitions

Agency—Rural Business-Cooperative Service, an agency of the United States

Department of Agriculture (USDA) Rural Development or a successor agency.

Agricultural Commodity—An unprocessed product of farms, ranches, nurseries, and forests. Agricultural commodities include: Livestock, poultry, and fish; fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn, and sorghum; legumes, such as field beans and peas; animal feed and forage crops; seed crops; fiber crops, such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals and cut flowers; and turf grown commercially for sod. Agricultural commodities do not include horses or animals raised as pets, such as cats, dogs, and ferrets.

Association of Cooperatives—An association of cooperatives whose primary focus is to provide assistance to small, socially-disadvantaged agricultural producers and where the governing board and/or membership is comprised of at least 75 percent socially-disadvantaged agricultural producers.

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, including their immediate family, have a legal or personal financial interest in the recipients receiving the benefits or services of the grant.

Cooperative—A farmer- or rancher-owned and -controlled business, organized and chartered as a cooperative, from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners whose primary focus is to provide assistance to small, socially-disadvantaged agricultural producers and where the governing board and/or membership is comprised of at least 75 percent socially-disadvantaged producers.

Cooperative Programs—The office within Rural Business-Cooperative Service, and any successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs identified in USDA regulations.

Economic Development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Feasibility Study—An analysis of the economic, market, technical, financial, and management feasibility of a proposed Project.

Operating Cost—The day-to-day expenses of running a business; for example: Utilities, rent, salaries, depreciation, product production costs, marketing and advertising, and other basic overhead items.

Project—Includes all activities to be funded by the Small Socially-Disadvantaged Producer Grant.

Rural and Rural Area—Any area of a State—

(1) Not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States; and

(2) The contiguous and adjacent urbanized area,

(3) Urbanized areas that are rural in character as defined by U.S.C. 1991 (a) (13), as amended by Section 6018 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 (June 18, 2008).

(4) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State. Notwithstanding any other provision of this paragraph, within the areas of the County of Honolulu, Hawaii, and the Commonwealth of Puerto Rico, the Secretary may designate any part of the areas as a rural area if the Secretary determines that the part is not urban in character, other than any area included in the Honolulu census designated place (CDP) or the San Juan CDP.

Rural Development—A mission area within USDA consisting of the Office of Under Secretary for Rural Development, Rural Development Business and Cooperative Programs, Rural Development Housing Programs, and Rural Development Utilities Programs and any successors.

Small, Socially-Disadvantaged Producer—Socially-disadvantaged persons or at least 75 percent socially-disadvantaged producer-owned entities including farmers, ranchers, loggers, agricultural harvesters, and fishermen, that have averaged $250,000 or less in annual gross sales of agricultural products in the last 3 years.

Socially-Disadvantaged Producer—Individual agricultural producer who is a member of a group whose members have been subjected to racial, ethnic or gender prejudice, without regard for their individual qualities.

State—Includes each of the several states, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau.

Technical Assistance—An advisory service performed for the benefit of a small, socially-disadvantaged producer such as market research; product and/or service improvement; legal advice and assistance; feasibility study, business plan, and marketing plan development; and training. Technical assistance does not include the operating costs of a cooperative being assisted.

II. Award Information

Type of Award: Grant.
Fiscal Year Funds: FY 2011.
Approximate Total Funding: $3.456 million.
Approximate Number of Awards: 18.
Floor of Award Range: None.
Ceiling of Award Range: $200,000.
Anticipated Award Date: September 15, 2011.
Budget Period Length: 12 months.
Project Period Length: 12 months.

III. Eligibility Information

A. Eligible Applicants

Applicants must be a cooperative or an association of cooperatives as defined in this Notice, and must be able to verify their legal structure as a cooperative in the state in which they are incorporated. Individuals are not eligible for this program.

B. Cost Sharing or Matching

No matching funds are required.

C. Other Eligibility Requirements

Use of Funds: Funds may only be used for technical assistance Projects as defined in this notice.

Project Area Eligibility: The Project proposed must take place in a rural area as defined in this Notice.

Grant Period Eligibility: If awarded, grant funds must be expended in 12 months. Applications must have a time frame of no more than 365 days with the time period beginning no earlier than the grant award date and ending no later than December 31, 2012. 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 12-month time frame. The Agency will not approve requests to extend the grant period. Applications that request funds for a time period ending after December 31, 2012, will not be considered for funding.

Completeness Eligibility: Applications lacking sufficient information to determine eligibility and scoring will be considered ineligible. Applications that are non-responsive to this notice will be considered ineligible.

Multiple Grant Eligibility: An applicant may not submit more than one grant application in any one funding cycle.

Activity Eligibility: Applications must propose technical assistance, as defined in this Notice, to benefit their members or other small socially-disadvantaged producers who are not members, in order to be considered for funding. Applications having ineligible costs equaling more than 10 percent of total Project costs will be determined ineligible and will not be considered for funding. Applications having ineligible costs of 10 percent or less of total Project costs and which are selected for funding must remove all ineligible costs from the budget and replace them with eligible activities or the amount of the grant award will be reduced accordingly. Applicants may not submit applications that duplicate current activities or activities paid for by other funded grant programs.

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_SSDPG.html*. Alternatively, applicants may contact their USDA Rural Development State Office. Contact information for State Offices can be found at *http://www.rurdev.usda.gov/recd_map.html.*

For electronic applications, applicants must visit *http://www.grants.gov* and follow the instructions.

B. Content and Form of Submission

Applications must be submitted on paper or electronically. An application guide may be viewed at *http://www.rurdev.usda.gov/BCP_SSDPG.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.*

If the application is submitted electronically, the applicant must follow the instructions given at the Internet address: *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 that they have obtained the proper authentication and have sufficient computer resources to complete the application.

Applicants must complete and submit the following elements. The Agency will screen all applications for eligibility and determine whether the application is complete and 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.

1. Form SF–424, ''Application for Federal Assistance,'' must be completed, signed, and must include a Dun 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 SSDPG Web site at *http://www.rurdev.usda.gov/BCP_SSDPG.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.'' This form must be completed and submitted as part of the application package.

3. Form SF–424B, ''Assurances—Non-Construction Programs.'' This form must be completed, signed, and submitted as part of the application package.

4. Table of Contents. For ease of locating information, each application must contain a detailed Table of Contents (TOC) immediately following the SF–424B. The TOC must include page numbers for each component of the application. Pagination should begin immediately following the TOC.

5. Executive Summary. A summary of the proposal, not to exceed one page, must briefly describe the Project, tasks to be completed and other relevant information that provides a general overview of the Project.

6. Eligibility Discussion: A detailed discussion, not to exceed four pages, must describe how the applicant meets the following requirements:

(i) Applicant Eligibility: The applicant must describe how they meet the definition of a cooperative or an association of cooperatives as defined in this Notice. The applicant must also verify their incorporation as a cooperative or an association of cooperatives in the state they have applied by providing the state's Certificate of Good Standing, and their Articles of Incorporation and By-Laws. The applicant must apply as only one type of applicant.

(ii) Use of Funds: The applicant must provide a detailed discussion on how the proposed Project activities meet the definition of technical assistance.

(iii) Project Area: The applicant must provide specific information on where the Projects are planned to be located and that the areas meet the definition of ''rural area.''

(iv) Grant Period: The applicant must provide a time frame for the proposed Project and discuss how the Project will be completed within that time frame.

7. Budget/Work plan: The applicant must describe, in detail not to exceed four pages, the purpose of the grant, what type of assistance will be provided, and the total amount of funds needed for each Project. The budget must also present a breakdown of estimated costs associated with each task/activity for each Project. The amount of grant funds requested will be adjusted if the applicant does not have justification for all costs.

8. Evaluation Criteria: Each of the evaluation criteria referenced in this notice must be addressed, specifically and individually on separate pages, in narrative form, not to exceed a total of two pages for each evaluation criteria. Failure to address each evaluation criteria will result in the application being determined ineligible.

C. Submission Dates and Times

Application Deadline Date: August 15, 2011.

Explanation of Deadlines: Paper applications must be POSTMARKED and mailed, shipped, or sent overnight by the deadline date. Electronic applications must be RECEIVED by *http://www.grants.gov* by the deadline date. If the Applicant's application does not meet the deadline, it will not be considered for funding. Applicants will be notified if their application did not meet the submission deadline.

D. National Environmental Policy Act

This NOFA has been reviewed in accordance with 7 CFR Part 1940, subpart G, ''Environmental Program.'' 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 National Environmental Policy Act (NEPA) regulation found at 7 CFR 1940.310(e)(3) of subpart G, ''Environmental Program.'' Thus, in accordance with NEPA (42 U.S.C. 4321–4347), Rural Development has determined that this 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 7 CFR 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.

E. Civil Rights Compliance Requirements

All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR Part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973.

F. 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. A list of states that maintain a SPOC may be obtained at *http://www.whitehouse.gov/omb/grants_spoc.* If your state has a SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to Rural Development for consideration as part of your application. If your state has not established a SPOC or you do not want to submit your application to the SPOC, Rural Development will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact Cooperative Programs at 202–720–8460 or *cpgrants@wdc.usda.gov* if you have questions about this process.

G. Funding Restrictions

Grant funds must be used for technical assistance. No funds made available under this solicitation shall be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;
2. Purchase, rent, or install fixed equipment, including processing equipment;
3. Purchase vehicles, including boats;
4. Pay for the preparation of the grant application;
5. Pay expenses not directly related to the funded Project;
6. Fund political or lobbying activities;
7. Fund any activities prohibited by 7 CFR Parts 3015 or 3019;
8. Fund architectural or engineering design work for a specific physical facility;
9. Fund any direct expenses for the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility;
10. Fund research and development;
11. Purchase land;
12. Duplicate current activities or activities paid for by other funded grant programs.
13. Pay costs of the Project incurred prior to the date of grant approval;
14. Pay for assistance to any private business enterprise, which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;
15. Pay any judgment or debt owed to the United States;
16. Pay the operating costs of cooperative and/or association of cooperatives;
17. Pay expenses for applicant employee training; or
18. Pay for any goods or services from a person who has a conflict of interest with the grantee.

H. Other Submission Requirements

Applicants may submit their paper application for a grant to their Rural Development State Office listed under the **ADDRESSES** section. Applicants may submit their application electronically at *http://www.grants.gov.* Applications may not be submitted by electronic mail or facsimile. Each application submission must contain all required documents in one envelope, if sent by mail or express delivery service.

V. Application Scoring Criteria Review Information

A. Criteria

All eligible and complete applications will be evaluated based upon the following criteria. Failure to address any one of the following criteria by the application deadline will result in the application being determined ineligible and the application will not be considered for funding. The total points possible for the criteria are 50. Any application receiving less than 30 total points will not be funded.

1. *Technical Assistance.* (0–15 points) The application will be evaluated to determine the applicant's ability to assess the needs of small socially-disadvantaged producers, plan and conduct appropriate and effective technical assistance, and identify the expected outcomes of that assistance.

(i) 0 points will be awarded if the applicant does not substantively address this criterion.

(ii) 5 points will be awarded if the applicant demonstrates weakness in addressing this criterion.

(iii) 10 points will be awarded if the applicant demonstrates they meet part but not all of the criterion.

(iv) 15 points will be awarded if the applicant identifies specific needs of the socially-disadvantaged producers to be assisted; clearly articulates a logical and detailed plan of assistance for addressing those needs; and discusses realistic outcomes of planned assistance.

2. *Experience.* (0–15 points) Points will be awarded based upon length of experience of identified staff or consultants in providing technical assistance, as defined in this Notice. Applicants must describe the specific type of technical assistance experience for each identified staff member or consultant, as well as years of experience in providing that assistance. In addition, resumes for each individual staff member or consultant must be included as an attachment, listing their experience for the type of technical assistance proposed. The attachments will not count toward the maximum page total. The Agency will compare the described experience to the work plan to determine relevance of experience.

(i) 0 points will be awarded if the staff or consultants demonstrate no relevant experience in providing technical assistance;

(ii) 5 points will be awarded if at least one of the identified staff or consultants demonstrates more than two years of experience in providing relevant technical assistance;

(iii) 10 points will be awarded if at least one of the identified staff or consultants demonstrates 5 or more years of experience in providing relevant technical assistance; or

(iv) 15 points will be awarded if all of the identified staff or consultants demonstrate 5 or more years of experience in providing relevant technical assistance.

3. *Commitment.* (0–15 points) The Agency will evaluate the applicant's commitment to providing technical assistance to small, socially-disadvantaged producers in rural areas. Points will be awarded based upon the number of socially-disadvantaged producers being assisted. Applicants must list the number and location of small, socially-disadvantaged producers that will directly benefit from the assistance provided.

(i) 0 points will be awarded if the applicant does not substantively address this criterion.

(ii) 5 points will be awarded if the proposed Project will benefit 1–10 small, socially-disadvantaged producers;

(iii) 10 points will be awarded if the proposed Project will benefit 11–50 small, socially-disadvantaged producers; or

(iv) 15 points will be awarded if the proposed Project will benefit more than 50 small, socially-disadvantaged producers.

4. *Local support.* (0–5 points) Applications will be reviewed for local support for the technical assistance activities of the cooperative. Applicants that demonstrate strong support from potential beneficiaries and other developmental organizations will receive more points than those not evidencing such support.

(i) 0 points will be awarded if the applicant does not substantively address this criterion.

(ii) 1 point will be awarded if the applicant provides or references 2–3 support letters that demonstrate substantive support from potential beneficiaries and/or support from local organizations.

(iii) 2 points will be awarded if the applicant provides or references 4–5 support letters that demonstrate substantive support from potential beneficiaries and/or support from local organizations.

(iv) 3 points will be awarded if the applicant provides or references 6–7 support letters that demonstrate substantive support from potential beneficiaries and/or support from local organizations.

(v) 4 points will be awarded if the applicant provides or references 8–9 support letters that demonstrate substantive support from potential beneficiaries and/or support from local organizations.

(vi) 5 points will be awarded if the applicant provides or references 10 support letters that demonstrate substantive support from potential beneficiaries and/or support from local organizations.

The applicant may submit a maximum of 10 letters of support. These letters should be included as an attachment to the application and will not count against the maximum page total. Additional letters from industry groups, commodity groups, local and state government, and similar organizations should be referenced, but not included in the application package. When referencing these letters, provide the name of the organization, date of the letter, the nature of the support, and the name and title of the person signing the letter.

B. Review and Selection Process

The Agency will screen all 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. Applications will be screened for eligibility and scored by the applicable State Office, then submitted to the National Office for review and ranking. The National Office will review the scores based upon the point allocation specified in this Notice. Applications will be funded in scoring rank order and submitted to the Administrator in rank order with funding level recommendations. The Administrator will break scoring ties based on Agency priorities for geographic distribution of grants, and serving underserved groups and underserved areas.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selections is expected to occur on or about September 15, 2011, subject to funding.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a notification of tentative selection for funding from Rural Development. Applicants must comply with all applicable statutes, regulations, and this notice before the grant award will receive final approval.

Unsuccessful applicants will receive notification, including appeal rights, by mail.

B. Administrative and National Policy Requirements

7 CFR Parts 3015, 3019, and subparts A and F of 7 CFR Part 4284 are applicable to grants made under this notice. These regulations may be obtained at *http://www.gpoaccess.gov/cfr/index.html.*

The following additional requirements apply to grantees selected for this program:

- Agency approved 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 a Drug-Free Workplace Requirement (Grants).''
- Form RD 400–4, ''Assurance Agreement.''

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/BCP_SSDPG.html.*

Fund Disbursement: The Agency will determine, based on 7 CFR Parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. As needed, but not more frequently than once every 30 days, an original of SF–270, ''Request for Advance or Reimbursement,'' may be submitted to Rural Development. Recipient's request for advance shall not be made in excess of reasonable outlays for the month covered.

Reporting Requirements: Grantees must provide Rural Development with an original or an 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. Grantees will submit:

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 comparing accomplishments to the objectives stated in the proposal, identifying all tasks completed to date

and providing 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 condition on the use of award funds must be discussed. 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, articles of incorporation, and bylaws as they relate to the assistance provided.

3. Final Project performance reports comparing accomplishments to the objectives stated in the proposal, identifying all tasks completed, and providing documentation supporting the reported results. If the original schedule provided in the work plan was not met, the report must discuss the problems or delays that affected completion of the Project. Compliance with any special condition on the use of award funds must be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks includes, but is not limited to, feasibility studies, marketing plans, business plans, articles of incorporation, and bylaws as they relate to the assistance provided. The final performance report is due within 90 days of the completion of the Project. The report must also include a summary at the end of the report with the number of small socially-disadvantaged producers assisted to assist in documenting the annual performance goals of the SSDPG program for Congress.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact the appropriate State Office as indicated in the **ADDRESSES** section of this notice.

VIII. Non-Discrimination 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 Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider and employer.

Dated: June 21, 2011.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2011–16262 Filed 6–28–11; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Department of Commerce, Economic Development Administration.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[5/13/2011 through 6/23/2011]

Firm name	Address	Date accepted for investigation	Products
AMZ Corporation	2206 Pennsylvania Avenue, York, PA 17404.	6/21/2011	The firm manufactures plated finishes, to ASTM and military specifications as well as individual requirements.
PWI, Inc.	109 South Knight Street, Wichita, KS 67213.	5/31/2011	The firm provides customized lighting systems ranging from LED to hot/cold cathode fluorescent lights.
Sharpe Mixers, Inc.	1541 South 92nd Place, Suite A, Seattle, WA 98108–5116.	5/18/2011	The firm manufactures raw materials and component parts for custom-designed portable mixers lines.
Top Tool Company	3100 84th Lane Northeast, Minneapolis, MN 55449–7264.	6/16/2011	The firm manufactures complex micro miniature dies and stamped components.
Victoria Precision, Inc.	410—C Clearview Avenue, Trevose, PA 19053.	6/20/2011	The firm specializes in close tolerance form grinding and milling, prototype work, production runs, product designing, progressive dies, molds, and jig fixtures.
WP Manufacturing, Inc. DBA WP Instruments, Inc..	802 South Sherman Street, Building B, Longmont, CO 80501.	6/16/2011	The firm manufactures molds used for plastic injection tooling, injection molded plastic parts and assemblies.

Any party having a substantial interest in these proceedings may request a public hearing on the matter.

A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: June 23, 2011.

Sunni Massey,

Eligibility Certifier.

[FR Doc. 2011–16329 Filed 6–28–11; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Doc. 10–2011]

Foreign-Trade Zone 274, Butte, Montana, Manufacturing Authority, REC Silicon, (Polysilicon and Silane Gas); Notice of Approval

On February 11, 2011, an application was submitted by the City and County of Butte-Silver Bow, grantee of Foreign-Trade Zone (FTZ) 274, requesting authority on behalf of REC Silicon to manufacture polysilicon and silane gas under FTZ procedures within Site 1 of FTZ 274 in Butte, Montana. The request was given notice in the **Federal Register** inviting public comment (Docket 10–2011, 76 FR 9320, 2/17/2011).

Section 400.32(b)(1)(i) of the FTZ Board's regulations (15 CFR part 400) allows the Assistant Secretary for Import Administration to act for the Board in making decisions on new manufacturing authority when the activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances. Pursuant to that regulatory provision, on June 22, 2011, the Assistant Secretary for Import Administration approved authority for REC Silicon's manufacturing activity, subject to the FTZ Act (19 U.S.C. 81a–81u) and the Board's regulations, including Section 400.28, and further subject to a restriction prohibiting the admission of foreign status silicon metal subject to an antidumping or countervailing duty order.

Dated: June 22, 2011.

Andrew McGilvray

Executive Secretary.

[FR Doc. 2011–16335 Filed 6–28–11; 8:45 am]

BILLING CODE ;P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Meeting of Chronic Hazard Advisory Panel on Phthalates and Phthalate Substitutes

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Consumer Product Safety Commission (''CPSC'' or ''Commission'') announces the fifth meeting of the Chronic Hazard Advisory Panel (CHAP) on phthalates and phthalate substitutes. The Commission appointed this CHAP to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles, pursuant to section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Pub. L. 110–314).

DATES: The meeting will be held on Monday, July 25, 2011, and Tuesday, July 26, 2011. The meeting will begin at approximately 8 a.m. on both days. It will end at approximately 5 p.m. on Monday and at approximately 3 p.m. on Tuesday.

ADDRESSES: The meeting will be held in the fourth floor hearing room at the Commission's offices at 4330 East West Highway, Bethesda, MD.

REGISTRATION AND WEBCAST: Members of the public who wish to attend the meeting may register onsite on the day of the meeting. This meeting will also be available live via Webcast at *http://www.cpsc.gov/Webcast.* Registration is not necessary to view the Webcast.

There will not be any opportunity for public participation at this meeting.

FOR FURTHER INFORMATION CONTACT: Michael Babich, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, Bethesda, MD 20814; telephone (301) 504–7253; e-mail *mbabich@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 108 of the CPSIA permanently prohibits the sale of any ''children's toy or child care article'' containing more than 0.1 percent of each of three specified phthalates—di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP). Section 108 of the CPSIA also prohibits, on an interim basis, the sale of any ''children's toy that can be placed in a child's mouth'' or ''child care article'' containing more than 0.1 percent of each of three additional phthalates—diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-n-octyl phthalate (DNOP).

Moreover, section 108 of the CPSIA requires the Commission to convene a CHAP ''to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles.'' The CPSIA requires the CHAP to complete an examination of the full range of phthalates that are used in products for children and:

- Examine all of the potential health effects (including endocrine disrupting effects) of the full range of phthalates;
- Consider the potential health effects of each of these phthalates, both in isolation and in combination with other phthalates;
- Examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based upon a reasonable estimation of normal and foreseeable use and abuse of such products;
- Consider the cumulative effect of total exposure to phthalates, from children's products and from other sources, such as personal care products;
- Review all relevant data, including the most recent, best available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data-collection practices or employ other objective methods;
- Consider the health effects of phthalates not only from ingestion but also as a result of dermal, hand-to-mouth, or other exposure;
- Consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, reviewing the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and
- Consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

The CPSIA contemplates completion of the CHAP's examination within 18 months of the panel's appointment. The CHAP must review prior work on phthalates by the Commission, but the prior work is not to be considered determinative because the CHAP's examination must be conducted *de novo.*

The CHAP must make recommendations to the Commission about which phthalates, or

combinations of phthalates (in addition to those identified in section 108 of the CPSIA), or phthalate alternatives that the panel determines should be prohibited from use in children's toys or child care articles or otherwise restricted. The Commission selected the CHAP members from scientists nominated by the National Academy of Sciences. See 15 U.S.C. 2077, 2030(b).

The CHAP met previously in April, July, and December 2010, and in March 2011. The CHAP heard testimony from interested parties at the July 2010 meeting. The July 2011 meeting will include discussion of the CHAP's progress in its analysis of potential risks from phthalates and phthalate substitutes. There will not be any opportunity for public comment at the July 25–26, 2011 meeting.

Dated: June 23, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–16218 Filed 6–28–11; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities; Notice of Hearing

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The U.S. Consumer Product Safety Commission (''Commission'') will conduct a public hearing to receive views from all interested parties about its agenda and priorities for fiscal year 2013, which begins on October 1, 2012. Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 2013 will become part of the public record.

DATES: The hearing will begin at 10 a.m. on July 20, 2011. Requests to make oral presentations and the written text of any oral presentations must be received by the Office of the Secretary not later than 5 p.m. Eastern Standard Time (''E.S.T.'') on July 15, 2011.

ADDRESSES: The hearing will be in the Hearing Room, 4th Floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, Maryland 20814. Requests to make oral presentations and texts of oral presentations should be captioned ''Agenda and Priorities FY 2013'' and sent by electronic mail (''e-mail'') to *cpsc-os@cpsc.gov,* or mailed or delivered to the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, no later than 5 p.m. E.S.T. on July 15, 2011.

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make an oral presentation, please send an e-mail, call, or write Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *cpsc-os@cpsc.gov;* telephone (301) 504–7923; facsimile (301) 504–0127. An electronic copy of the CPSC's budget request for fiscal year 2012 can be found at *http://www.cpsc.gov/cpscpub/pubs/reports/2012plan.pdf.*

SUPPLEMENTARY INFORMATION: Section 4(j) of the Consumer Product Safety Act (''CPSA'') (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission conduct a public hearing and provide an opportunity for the submission of comments.

Persons who desire to make oral presentations at the hearing on July 20, 2011, should send an e-mail, call, or write Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, e-mail *cpsc-os@cpsc.gov,* telephone (301) 504–7923, facsimile (301) 504–0127 not later than 5 p.m. E.S.T. on July 15, 2011. Presentations should be limited to approximately 10 minutes.

Persons desiring to make presentations must submit the text of their presentations to the Office of the Secretary not later than 5 p.m. E.S.T. on July 15, 2011. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on July 20, 2011, and will conclude the same day.

Dated: June 24, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–16235 Filed 6–28–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0069]

Notice of Intent To Prepare an Environmental Assessment Regarding DLA Energy's Mobility Fuel Purchasing Programs

AGENCY: Defense Logistics Agency Energy (DLA Energy), DoD.

ACTION: Notice of Intent To Prepare an Environmental Assessment Regarding DLA Energy's Mobility Fuel Purchasing Programs.

SUMMARY: The Defense Logistics Agency is America's combat logistics support agency responsible for sourcing and providing nearly every consumable item used by U.S. military forces worldwide. DLA Energy is a primary level field activity of DLA responsible for providing the Department of Defense and other government agencies with comprehensive energy solutions in the most effective and efficient manner possible. Its products and services offer a large array of energy related needs for the Federal Government and also help facilitate the cycle of storage and deployment of fuels and other energy sources.

DLA Energy's action, to purchase mobility fuels for the Department of Defense, has not changed. However, the nature and makeup of the petroleum market has. Crude oil from Canada represents 13% of total United States consumption. The Canadian Association of Petroleum Producers 2010 forecast states that by 2020 Canadian oil sands production will rise from 2.72 million barrels per day in 2009 to 4.34 million barrels per day in 2025. In addition, within the past three years, the Department of State has approved two new pipelines to transport crude oil derived from Canadian oil sands to the United States. An additional permit for a third pipeline is pending. Thus, more petroleum products derived from Canadian oil sands recovered crude may be available within the United States petroleum market. In addition, because various types of crudes are comingled prior to processing and because refined petroleum products are fungible, it is anticipated that these petroleum products produced from Canadian oil sands recovered crude will be blended with and thus indistinguishable from other petroleum products, thereby making it difficult for DLA Energy to exclude Canadian oil sands recovered crude refined petroleum from routine petroleum purchases. Therefore, DLA Energy has decided to study whether its

current purchases of mobility fuels for its customers today, and in the future, would or would not have environmental consequences. DLA Energy will conduct an Environmental Assessment to evaluate the potential environmental, human health, engineering and socioeconomic considerations, including a review of lifecycle greenhouse gas emissions, associated with DLA Energy's purchase of mobility fuels, including any fuels containing Canadian oil sands recovered crude, in light of Section 526 of the EISA.

The Environmental Assessment will aid DLA Energy in defining the effects of its current mobility fuels purchasing program, and determine whether a modification to this program would bring an improved environmental outcome without consequences to DLA Energy's mission to support the Warfighter with comprehensive Energy solutions in the most effective and efficient manner possible.

This notice serves as an announcement of scoping. As such, comments are sought from the public, government agencies, and other interested persons and organizations. Scoping is used to gain insight into the issues to be addressed and to identify other significant issues related to the proposed actions. All comments submitted during scoping will be considered by DLA Energy.

There is always the possibility that DLA Energy might proceed to prepare an Environmental Impact Statement for the proposed actions instead of an Environmental Assessment. If this occurs, comments submitted now will be considered for any Environmental Impact Statement that is developed.

DATES: Comments on the scope of the issues and alternatives to be addressed in the Environmental Assessment must be postmarked or e-mailed no later than 30 days from the date of publication.

ADDRESSES: You may submit comments, identified by the docket ID and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: NEPA@dla.mil.* Include the docket ID in the subject line of the message.
- *Mail:* Project Manager for NEPA, DLA Installation Support for Energy, 8725 John J Kingman Road, Suite 2828, Fort Belvoir, VA 22060.
- *Mailing List:* To be added to a mailing list about the proposed actions, contact DLA Installation Support for Energy at 703–767–8312.

Note: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Donald Martin, Environmental Management Division, DLA Installation Support for Energy, 8725 John J. Kingman Road, Suite 2828, Fort Belvoir, VA 22060, (703) 767–8312, *NEPA@dla.mil.*

SUPPLEMENTARY INFORMATION: The mission of the DLA Energy (formerly known as Defense Energy Support Center) is to provide the Department of Defense (DoD) and other government agencies with comprehensive energy solutions in the most effective and efficient manner possible. DLA Energy contracts for fuel and other types of energy on behalf of the DoD and other government agencies.

More than 99% of the fuel DLA Energy purchases are petroleum products. In FY 2010, DLA Energy purchased 5.5 billion gallons of fuel world wide, which included aviation fuels, marine distillate fuels and ground products such as heating oil, diesel and gasoline. Although DLA Energy is the largest federal government purchaser of petroleum, its purchases constitute less than 2% of total United States consumption. Within the jet fuel market, DLA Energy's purchases are about 10% of total United States jet fuel consumption.

For all of its procurements, DLA Energy follows standard procurement procedures as required in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement. DLA Energy uses commercial contracting procedures for commercial items found in Part 12 of these regulations. Almost all contracts are solicited using full and open competitive procedures and are awarded based on price. All the petroleum based fuel contracts contain economic price adjustment provisions, using market based industry publications.

DLA Energy relies on industry practices and standards for manufacture, delivery, inspection, and acceptance of the fuels it purchases. All petroleum fuels are purchased under commercial or military specifications. The military specification fuel differs in only a few parameters from the commercial counterpart, such as flash point, freeze point and some special fuel additives. The military specification fuel is produced in the same refineries by the same methods as other commercial petroleum products and the same refineries which are producing military specification product for DLA Energy are producing commercial petroleum products at the same time.

In addition, Section 526 of the Energy Independence and Security Act of 2007 requires that the lifecycle greenhouse gas emissions of alternative or synthetic fuels, including a fuel produced from nonconventional petroleum sources, be less than or equal to the lifecycle greenhouse gas emissions of equivalent conventional petroleum in order for the federal government to contract for the fuel.

Dated: June 20, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–16305 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces

AGENCY: Department of Defense.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory Committee meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (subsequently referred to as the Task Force) will take place. The purpose of the meeting is for the Task Force Members to prepare and vote on recommendations and time permitting, discuss the remaining sections of the annual report. Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

DATES: Tuesday, July 26, 2011, Wednesday, July 27, 2011, Thursday, July 28, 2011 from 8 a.m. to 6 p.m.

ADDRESSES: Meeting address is Holiday Inn Hotel & Suites Alexandria—Historic District, 625 First Street, Alexandria, VA 22314. Mail Delivery service through

Recovering Warrior Task Force, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–0021 ''Mark as Time Sensitive for July Meeting''.

FOR FURTHER INFORMATION CONTACT: Denise F. Dailey, Designated Federal Officer, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–0021, *phone:* (703) 325–6640, *Fax:* (703) 325–6710, *e-mail: rwtf@wso.whs.mil.*

SUPPLEMENTARY INFORMATION:

Agenda: (Please refer to *http://dtf.defense.gov/rwtf/meetings.html* for the most up-to-date meeting information).

Tuesday, July 26

8 a.m.—Public Forum (Open to the public)
8:30 a.m.—Review of the Draft Report (Open to the public)
10:30 a.m.—Preparatory Session Breakout Groups (Not open to the public)
12 p.m.—Break for Lunch
1 p.m.—Preparatory Session Breakout Groups (Not open to the public)
2 p.m.—Consolidated Session: Return for review of preparatory sessions' work and begin recommendation voting session. (Open to the public)
6 p.m.—Closing

Wednesday, July 27

8 a.m.—Preparatory Session Breakout Groups (Not open to the public)
10 a.m.—Consolidated Session: Return for review of preparatory sessions' work and begin recommendation voting session. (Open to the public)
12 p.m.—Break for Lunch
1 p.m.—Preparatory Session Breakout Groups (Not open to the public)
2 p.m.—Consolidated Session: Return for review of preparatory sessions' work and begin recommendation voting session (Open to the public)
6 p.m.—Closing

Thursday, July 28

8 a.m.—If voting on Task Force recommendations is complete, the Task Force will review/discuss next year's recommended installation visits and topics. If voting is not complete on recommendations, a voting session will continue throughout the day until complete. (Open to the public)
10:15 a.m.—Break
10:30 a.m.—Establish matrix breakout for each recommendation. Subject to voting session completion. (Open to the public)
12 p.m.—Break for Lunch
1 p.m.—Review best practices enclosure. Subject to voting session completion. (Open to the public)
2 p.m.—Review Executive Summary. Subject to voting session completion. (Open to the public)
3 p.m.—Review Appendices. Subject to voting session completion. (Open to the public)
5 p.m.—Closing

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces about its mission and functions. If individuals are interested in making an oral statement during the Public Forum time period, a written statement for a presentation of two minutes must be submitted as below and must identify it is being submitted for an oral presentation by the person making the submission. As the Members will have finished their research for this year of effort and are drafting the final report and recommendations, please focus your oral statements on the draft report and any recommendations you as a member of the public would like to see the Task Force make on behalf of Wounded Warriors and submit to *rwtf@wso.whs.mil* or mailing address and fax below. The Draft report will be provided on the Task Force Web site *(http://dtf.defense.gov/rwtf/)* by COB July 15, 2011. Identification information must be provided and at a minimum must include a name and a phone number. Determination of who will be making an oral presentation will depend on the submitted topic's relevance to the Task Force's Charter. Individuals may visit the Task Force Web site at *http://dtf.defense.gov/rwtf/* to view the Charter. Individuals making presentations will be notified by Friday, July 22, 2011. Oral presentations will be permitted only on Tuesday, July 26, 2011 from 8 to 8:30 a.m. before the full Task Force. Number of oral presentations will not exceed ten, with one minute of questions available to the Task Force members per presenter. Presenters should not exceed their two minutes. Written statements which the author does not wish to present orally may be submitted at any time or in response to the stated agenda of a planned meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Task Force through the above contact information, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed no later than 5 p.m. Eastern Daylight Time (EDT), Wednesday, July 20, 2011 which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Task Force until its next meeting. Please mark mail correspondence as ''Time Sensitive for July Meeting.'' The Designated Federal Officer will review all timely submissions with the Task Force Co-Chairs and ensure they are provided to all members of the Task Force before the meeting that is the subject of this notice.

Reasonable accommodations will be made for those individuals with disabilities who request them. Requests for additional services should be directed to Heather Jane Moore, (703) 325–6640, by 5 p.m. (EDT), Wednesday, July 20, 2011.

Dated: June 20, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–16304 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0070]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on July 29, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*

Follow the instructions for submitting comments.

* Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 23, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 18

SYSTEM NAME:

Human Research Protection Program (HRPP) Records (September 11, 2008, 73 FR 52838).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Research Regulatory Oversight Records.''

SYSTEM LOCATION:

Delete entry and replace with ''Deputy Assistant Secretary of Defense (Force Health Protection and Readiness Programs), Research Regulatory Oversight Office, Skyline 4, Suite 901, 5113 Leesburg Pike, Falls Church, VA 22041–3206.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Military, civilian, and contractor investigators who engage in or conduct research involving human participants; and military, civilian, or contractor personnel, including civilian or contractor personnel from other Federal agencies, responsible for the review, approval, and regulatory oversight of such research.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, work address, work e-mail, work telephone number, resume, and documentation of training required to conduct research involving human participants or necessary to conduct review, approval, and regulatory oversight of such research.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 32 CFR Part 219, Protection of Human Subjects; DoD Directive 5136.01, Assistant Secretary of Defense for Health Affairs (ASD(HA)); and DoD Directive 3216.02, Protection of Human Subjects and Adherence to Ethical Standards in DoD Supported Research.''

PURPOSE(S):

Delete entry and replace with ''To document proper training and qualifications of those individuals conducting and reviewing research involving human participants.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, local, or foreign government agencies for identification, tracking, and oversight of authorized research procedures and tracking of individual researchers and reviewers involved in the process.

To private business entities for matters relating to eligibility, quality assurance, peer review, and program integrity.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Media, data and/or records are maintained in a controlled area. The computer system is accessible only to authorized personnel. Entry into these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, passwords which are changed periodically, and administrative procedures. The system provides two-factor authentication including Common Access Card and password. Access to personal information is restricted to those who require the data in the performance of their official duties, and have received proper training relative to the Privacy Act of 1974 and Information Assurance.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are retained for 10 years after completion or termination of the research protocol (coincides with the term of the research) and then destroyed.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Program Manager, Deputy Assistant Secretary of Defense (Force Health Protection and Readiness Programs), Research Regulatory Oversight Office, Skyline 4, Suite 901, 5113 Leesburg Pike, Falls Church, VA 22041–3206.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Program Manager, Deputy Assistant Secretary of Defense (Force Health Protection and Readiness Programs), Research Regulatory Oversight Office, Skyline 4, Suite 901, 5113 Leesburg Pike, Falls Church, VA 22041–3206.

Requests should contain the full name of the individual, work address, work telephone number, and must be signed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to TRICARE Management Activity, Attention: Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Requests must include the name and number of this system of record notice, individual's name and address, and must be signed.''

* * * * *

DHA 18

SYSTEM NAME:

Research Regulatory Oversight Records.

SYSTEM LOCATION:

Deputy Assistant Secretary of Defense (Force Health Protection and Readiness Programs), Research Regulatory Oversight Office, Skyline 4, Suite 901, 5113 Leesburg Pike, Falls Church, VA 22041–3206.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, civilian, and contractor investigators who engage in or conduct research involving human participants; and military, civilian, or contractor personnel, including civilian or contractor personnel from other Federal agencies, responsible for the review, approval, and regulatory oversight of such research.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, work address, work e-mail, work telephone number, resume, and documentation of training required to conduct research involving human participants or necessary to conduct review, approval, and regulatory oversight of such research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 32 CFR 219, Protection of Human Subjects; DoD Directive 5136.01, Assistant Secretary of Defense for Health Affairs (ASD(HA)); and DoD Directive 3216.02, Protection of Human Subjects and Adherence to Ethical Standards in DoD Supported Research.

PURPOSE(S):

To document proper training and qualifications of those individuals conducting and reviewing research involving human participants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, local, or foreign government agencies for identification, tracking, and oversight of authorized research procedures and tracking of individual researchers and reviewers involved in the process.

To private business entities for matters relating to eligibility, quality assurance, peer review, and program integrity.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper file folders and electronic storage media.

RETRIEVABILITY:

Individual's name.

SAFEGUARDS:

Media, data and/or records are maintained in a controlled area. The computer system is accessible only to authorized personnel. Entry into these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, passwords which are changed periodically, and administrative procedures. The system provides two-factor authentication including Common Access Card and password. Access to personal information is restricted to those who require the data in the performance of their official duties, and have received proper training relative to the Privacy Act of 1974 and Information Assurance.

RETENTION AND DISPOSAL:

Records are retained for 10 years after completion or termination of the research protocol (coincides with the term of the research) and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Deputy Assistant Secretary of Defense (Force Health Protection and Readiness Programs), Research Regulatory Oversight Office, Skyline 4, Suite 901, 5113 Leesburg Pike, Falls Church, VA 22041–3206.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Program Manager, Deputy Assistant Secretary of Defense (Force Health Protection and Readiness Programs), Research Regulatory Oversight Office, Skyline 4, Suite 901, 5113 Leesburg Pike, Falls Church, VA 22041–3206.

Requests should contain the full name of the individual, work address, work telephone number, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to TRICARE Management Activity, Attention: Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Requests must include the name and number of this system of record notice, individual's name and address, and must be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR Part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–16303 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0068]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice; correction.

SUMMARY: On Friday, June 24, 2011 (76 FR 37082–37084), the Department of Defense published a notice to amend a system of records. On page 37083, in the second column, in the line preceding the SYSTEM NAME heading, the System of Records Notice (SORN) identification number ''S190.19'' should read ''S190.10''.

Dated: June 24, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–16309 Filed 6–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning the Guanidylimidazole and Guanidylimidazoline Derivatives as Antimalarial Agents, Synthesis of and Methods of Use Thereof

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/517,858, entitled ''Guanidylimidazole and Guanidylimidazoline Derivatives as Antimalarial Agents, Synthesis of and Methods of Use Thereof,'' filed on April 26, 2011. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, *Attn:* Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to new guanidylimidazole derivatives and guanidylimidazoline derivatives, methods of making these compounds, compositions containing the same, and methods of using the same to prevent, treat, or inhibit malaria in a subject. The compounds have radical curative antimalarial activity.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–16291 Filed 6–28–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning the 2-Guanidino-4-oxo-Imidazoline Derivatives as Antimalarial Agents, Synthesis of and Methods of Use Thereof

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/518,800, entitled ''2-Guanidino-4-oxo-Imidazoline Derivatives as Antimalarial Agents, Synthesis and Methods of Use Thereof,'' filed on April 26, 2011. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, *Attn:* Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to new 2-guanidino-4-oxo-imidazoline derivatives (deoxo-IZ), methods of making these compounds, compositions containing the same, and methods of using the same to prevent, treat, or inhibit malaria in a subject. The compounds have radical curative antimalarial activity.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–16258 Filed 6–28–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Currituck Sound Ecosystem Restoration Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) intends to prepare a Draft Environmental Impact Statement (DEIS) for the Currituck Sound Ecosystem Restoration Feasibility Study. The feasibility study is a cost-shared effort, being conducted in partnership with the North Carolina Division of Water Resources (NCDWR), to recommend Federal actions for ecosystem restoration in Currituck Sound. The study is taking a watershed perspective to develop and evaluate alternatives to restore and enhance ecosystem resources in a holistic, collaborative manner, and to ensure full participation of all stakeholders. Significant environmental resources to be addressed during project studies and in the DEIS include, but are not limited to: (1) Endangered and threatened species; (2) Marine and estuarine resources; (3) Fish and wildlife and their habitats, including essential fish habitat; (4) Water quality; (5) Socioeconomic resources; and (6) Cultural resources. Efforts will be made to enhance resource conditions and minimize adverse impacts.

The lead Federal agency for this study is the USACE, Wilmington District. As stated above, the NCDWR is the lead State agency and a full cost-sharing partner in the conduct of this study. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State Laws and Executive Orders. The DEIS is currently scheduled for distribution to the public February 2012.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Mr. Doug Piatkowski, Environmental Resources Section; U.S. Army Engineer District, Wilmington; 69 Darlington Avenue, Wilmington, North Carolina 28403; telephone (910) 251–4908.

SUPPLEMENTAL INFORMATION.

1. *Authority.* The feasibility study is being carried out under the Corps of Engineers' General Investigation Program and is being conducted in response to the following House resolution adopted March 11, 1998:

> Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, that the Secretary of the Army is requested to review the report of the Division Engineer dated June 25, 1991, on Eastern North Carolina above Cape Lookout, North Carolina, and other pertinent reports, to determine whether modifications to the recommendations contained therein are advisable at the present time in the interest of water quality, environmental restoration and protection, and related purposes in Currituck Sound.

2. *Project Purpose.* The project purpose is to maintain, restore, and enhance vital aquatic habitats of the Currituck Sound to ensure the survival of wildlife and fisheries. These habitats include: the estuarine water column, wetlands including coastal marsh and shrub buffers, submerged aquatic vegetation, and bird nesting islands.

3. *Alternatives.* This study will investigate the following alternatives: No action alternative, creation, enhancement, or protection of marsh islands and/or back barrier marsh including creation and/or restoration of bird nesting habitat; construction of vegetative buffers along riparian drainages; removal and/or control of exotic and invasive species; and protection and establishment of SAV habitats. The final outcome of this study would be a feasibility report and an Environmental Impact Statement (EIS), which would recommend projects for construction authorization.

4. *Public Involvement.* Public participation in the EIS process will be strongly encouraged both formally and informally, to support the formulation of a more technically feasible and socially and politically acceptable ecosystem restoration project. Public involvement activities for this study will include but are not limited to: periodic dissemination of information and study findings via meetings and the Wilmington District web site; identification of restoration problems, needs, and opportunities; evaluation of potential restoration measures and subsequent development of alternatives; issuance of public and scoping notices and meetings; public and stakeholder workshops; and posting of the completed EIS on the Internet as well as in hard copy at readily accessible public locations.

5. *Scoping.* All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the initiation of the Currituck Sound EIS and are invited to comment at this time. An initial scoping letter dated 13 April 2001 was circulated during the early planning phase of this study. This Notice of Intent (NOI) constitutes an updated scoping request.

A formal scoping meeting is not planned at this time but may be held if it is determined that new information could be obtained that would not otherwise be available. All comments received as a result of this NOI and the previous scoping letter will be considered in the preparation of the EIS.

In accordance with the Council on Environmental Quality's (CEQ's) NEPA regulations (40 CFR 1506.1), Federal agencies with jurisdiction by law or with special expertise shall be invited to be Cooperating Agencies. Through an email dated 12 July 2010, Agency representatives were invited to participate in this study as a Cooperating Agency. To date, no formal Cooperating Agency status has been established with any Agencies.

6. *Coordination.* The USACE will consult with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act; with the National Marine Fisheries Service under the Magnuson-Stevens Fishery Conservation and Management Act and the Endangered Species Act; and with the North Carolina State Historic Preservation Office under the National Historic Preservation Act. Additionally, the USACE will coordinate the DEIS with the North Carolina Division of Water Quality to assess the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and with the North Carolina Division of Coastal Management to determine the project's consistency with the Coastal Zone Management Act. Other Agencies will be consulted with as required.

7. *Availability of the Environmental Impact Statement.* The earliest the DEIS will be available for public review would be February 2012. The DEIS or a Notice of Availability will be distributed to affected Federal, State, and local agencies, Indian tribes, and other interested parties.

Jefferson M. Ryscavage,

Colonel, U.S. Army, District Commander.

[FR Doc. 2011–16292 Filed 6–28–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 29, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 24, 2011.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title of Collection: Corrective Action Plan (CAP).

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Quarterly; annually.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 60.

Total Estimated Number of Annual Burden Hours: 975.

Abstract: Pursuant to Section 107(a) of the Rehabilitation Act of 1973, as amended, the Rehabilitation Services Administration (RSA) must conduct

periodic monitoring of the Vocational Rehabilitation (VR) program in each state. As a result of this monitoring, RSA may require that VR agencies to develop a Corrective Action Plan (CAP) in order to resolve findings of non-compliance. The CAP must contain the specific steps that the agency will take to resolve each finding, timelines for the completion of each step and methods for evaluating that the findings have been resolved. RSA requires the agency to report progress toward completion of the CAP on a quarterly basis.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4654. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–16284 Filed 6–28–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Americans With Disabilities Act (ADA) National Network Regional Centers and ADA National Network Collaborative Research Projects

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRP)—ADA National Network Regional Centers (formerly the Disability Business Technical Assistance Centers (DBTACs), and ADA National Network Collaborative Research Projects.

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133A–6 and 84.133A–8.

Note: This notice invites applications for the first of two related competitions and announces key information for both competitions. For key dates and funding information regarding each competition, see the chart in the *Award Information* section of this notice.

DATES:

Applications Available: See chart.

Date of Pre-Application Meeting: July 20, 2011.

Deadline for Transmittal of Applications: See chart.

Full Text of Announcement

I. Funding Opportunity Description

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).

Disability and Rehabilitation Research Projects (DRRPs)

The purpose of DRRPs, which are funded under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#DRRP.*

Priorities: NIDRR has established three absolute priorities, which correspond to the two competitions announced in this notice as follows:

Competition	Applicable priorities
CFDA No. 84.133A–6.	*ADA National Network Regional Centers.* *General Disability and Rehabilitation Research Projects (DRRP) Requirements priority.*
CFDA No. 84.133A–8.	*ADA National Network Collaborative Research Projects.* *General DRRP Requirements priority.*

Absolute Priorities: The *General DRRP Requirements* priority, which applies to all DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The priorities for the *ADA National Network Regional Centers* and the *ADA National Network Research Collaboratives* are from the notice of final priorities for this the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register.**

Absolute Priorities: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants for these competitions, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that meet the applicable priorities for that competition.

These priorities are:

1. *ADA National Network Regional Centers.*

2. *ADA National Network Research Collaboratives.*

3. *General Disability and Rehabilitation Research Projects (DRRP) Requirements priority.*

Note: The full text of these priorities is included in the pertinent notice of final priorities published in the **Federal Register** and in the application packages for these programs.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for

this program in 34 CFR part 350. (c) The notice of final priorities published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: See chart.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

CFDA No. and name	Applications available	Deadline for transmittal of applications	Estimated available funds	Estimated range of awards	Estimated number of awards	Maximum award amount (per year) [1 2 3]	Project period (months)
84.133A–6, ADA National Network Regional Center. Region I	June 29, 2011	August 15, 2011	$1,000,000	$950,000–$1,000,000	1	$1,000,000	60
84.133A–6, ADA National Network Regional Center Region II.	June 29, 2011	August 15, 2011	1,112,165	1,062,165–1,112,165	1	1,112,165	60
84.133A–6, ADA National Network Regional Center Region III.	June 29, 2011	August 15, 2011	1,112,165	1,062,165–1,112,165	1	1,112,165	60
84.133A–6, ADA National Network Regional Center Region IV.	June 29, 2011	August 15, 2011	1,246,000	1,196,000–1,246,000	1	1,246,000	60
84.133A–6, ADA National Network Regional Center Region V.	June 29, 2011	August 15, 2011	1,246,000	1,196,000–1,246,000	1	1,246,000	60
84.133A–6, ADA National Network Regional Center Region VI.	June 29, 2011	August 15, 2011	1,112,165	1,062,165–1,112,165	1	1,112,165	60
84.133A–6, ADA National Network Regional Center Region VII.	June 29, 2011	August 15, 2011	1,000,000	950,000–1,000,000	1	1,000,000	60
84.133A–6, ADA National Network Regional Center Region VIII.	June 29, 2011	August 15, 2011	1,000,000	950,000–1,000,000	1	1,000,000	60
84.133A–6, ADA National Network Regional Center Region IX.	June 29, 2011	August 15, 2011	1,246,000	1,196,000–1,246,000	1	1,246,000	60
84.133A–6, ADA National Network Regional Center Region X.	June 29, 2011	August 15, 2011	1,000,000	950,000–1,000,000	1	1,000,000	60
84.133A–8, ADA National Network Collaborative Research Projects.	Letters inviting applications will be mailed to successful applicants of the ADA National Network Regional Centers competition. Applications will be available on line at the time of the mailing.	The Department will establish the deadline date for the competition in the letter it provides to eligible applicants under this notice.	.....	.....	2	615,250	60

Note: The Department is not bound by any estimates in this notice.

[1] We will reject any application that proposes a budget exceeding the Maximum Amount. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

[2] The maximum amount includes direct and indirect costs.

[3] The maximum award amount for the ADA National Network Regional Centers is based upon the size of the population in the States and territories in each region.

III. Eligibility Information

1. *Eligible Applicants:*

(a) *For the ADA National Network Regional Centers Competition (84.133A–6):* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

(b) *For the ADA National Network Collaborative Research Projects Competition (84.133A–8):* Grantees under the FY 2011 ADA National Network Regional Centers (84.133A–6) competition. Successful grantees under the ADA National Network Regional Centers competition will be invited by letter to apply for funding as a lead center under the ADA Network Research Collaboratives.

2. *Cost Sharing or Matching:* Cost sharing is required under 34 CFR 350.62(a) and will be negotiated at the time of award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, *toll free:* 1–877–433–7827. *FAX:* (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify the competition as follows: CFDA numbers 84.133A–6 and 84.133A–8.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

The application package for each of the competitions announced in this notice will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative budget justification; other required forms; an abstract, Human Subjects narrative, Part III project narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: See chart.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held July 20, 2011. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5140, PCP, Washington, DC 20202–2700. *Telephone:* (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.* Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, PCP, Washington, DC 20202–2700. *Telephone:* (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: August 15, 2011.

Applications for grants under the competitions announced in this notice must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under these competitions must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the ADA National Network Regional Centers and ADA National Network Research Collaboratives competitions, CFDA number 84.133A–6 and 84.133A–8, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant applications for the ADA National Network Regional Centers and the ADA National Network Research Collaboratives competitions at *www.Grants.gov.* You must search for the downloadable application package for these competitions by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.133, not 84.133A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for these competitions to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem

you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, *Attention:* (CFDA Numbers 84.133A–6 and 84.133A–8), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Numbers 84.133A–6 and 84.133A–8), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the ADA National Network Regional Centers competition and the ADA National Network Research Collaboratives competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package for these competitions.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

For Further Information Contact: Either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. *Telephone:* (202) 245–7338 or by *e-mail: Lynn.Medley@ed.gov.* Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. *Telephone:* (202) 245–7532 or by *e-mail: Marlene.Spencer@ed.gov.*

If you use a TDD call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) 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 (Federal Relay Service) 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 24, 2011.

Andrew J. Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–16391 Filed 6–28–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Americans With Disabilities Act (ADA) National Network Knowledge Translation Center (ADA KT Center)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRP)—The ADA National Network Knowledge Translation Center

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–7.

DATES: Applications Available: June 29, 2011.

Date of Pre-Application Meeting: July 20, 2011.

Deadline for Transmittal of Applications: August 15, 2011.

Full Text of Announcement

I. Funding Opportunity Description

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).

Disability and Rehabilitation Research Projects (DRRPs)

The purpose of DRRPs, which are funded under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on DRRPs can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The *General DRRP Requirements* priority, which applies to all DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *ADA National Network Knowledge Translation Center* priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register.**

For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability Rehabilitation Research Projects (DRRP) Requirements and *ADA National Network Knowledge Translation Center.*

Note: The full text of these priorities is included in the pertinent notices of final priorities published in the **Federal Register** and in the application package for this program.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $850,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $850,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required under 34 CFR 350.62(a) and will be negotiated at the time of award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/indes.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133A–7.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative budget justification; other required forms; an abstract, Human Subjects narrative, Part III project narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: June 29, 2011.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held July 20, 2011. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.* Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. *Telephone:* (202) 245–7532 or by *e-mail: Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: August 15, 2011.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the ADA National Network Knowledge Translation Center competition, CFDA number 84.133A–7, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant applications for the ADA National Network Knowledge Translation Center competition at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.133, not 84.133A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application

deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133A–7), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

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If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline

date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133A–7), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of accomplishments (*e.g.*, new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

For Further Information Contact: Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5140, PCP, Washington, DC 20202–2700. *Telephone:* (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, PCP, Washington, DC 20202–2700. *Telephone:* (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

If you use a TDD call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) 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 24, 2011.

Andrew J. Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–16341 Filed 6–28–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Final Priorities; Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects, etc.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

Overview Information

[CFDA Numbers: 84.133A–6, 84.133A–7, and 84.133A–8] Final Priorities; Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRP)—Americans with Disabilities Act (ADA) National Network Regional Centers (formerly the Disability Business Technical Assistance Centers (DBTACs), the ADA National Network Knowledge Translation Center, and the ADA National Network Collaborative Research Projects.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces three priorities under the DRRP program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, we announce (1) A priority for the Americans with Disabilities Act (ADA) National Network Regional Centers (Priority 1), (2) a priority for the ADA National Network Knowledge Translation Center (Priority 2), and (3) a priority for the ADA National Network Collaborative Research Projects (Priority 3). The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2011 and later years. We take this action to focus attention on areas of national need.

DATES: *Effective Date:* These priorities are effective July 29, 2011.

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. *Telephone:* (202) 245–7338 or by *e-mail: lynn.medley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priorities (NFP) 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 the 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 announces three priorities that NIDRR intends to use for DRRP competitions 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 any of these priorities. The decision to make an award will be based on the quality of applications received and available funding.

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).

Disability and Rehabilitation Research Projects

The purpose of NIDRR's Disability and Rehabilitation Research Projects (DRRPs) are to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR Part 350.

We published a notice of proposed priorities (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on March 22, 2011 (76 FR 15964). That notice contained background information and our reasons for proposing priorities for the ADA National Network Regional Centers (ADA Regional Centers), the ADA National Network Knowledge Translation Center (ADA KT Center), and the ADA National Network Collaborative Research Projects.

Public Comment: In response to our invitation in the NPP, twelve parties submitted comments on the proposed priorities.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the NPP follows.

Americans with Disabilities Act (ADA) National Network Regional Centers (Priority 1)

Comment: One commenter asked whether applicants under Priority 1 have the option of proposing research activities.

Discussion: While Priority 1 does not require applicants to propose research activities, nothing in the priority precludes an applicant from proposing research in support of the activities that are required. What is critical is that an applicant addresses all of the required activities in its application.

Changes: None.

Comment: Three commenters noted that paragraph (a) of Priority 1 does not mention outreach and capacity building as key services provided by the ADA Regional Centers. The commenters recommended that NIDRR add those services to the list of activities that collectively make up the ADA Network Services.

Discussion: NIDRR agrees that outreach to ADA stakeholders and efforts to build their capacity to facilitate implementation of, and compliance with, the ADA are important services provided by the ADA Regional Centers.

Changes: NIDRR has revised paragraph (a) of Priority 1 to add outreach and capacity building to the list of required ADA Network Services.

Comment: Three commenters recommended that the ADA Regional Centers be required to ensure that all of their online information and information technology tools and products are accessible to individuals with disabilities. The commenters recommended that NIDRR reference standards developed under section 508 of the Rehabilitation Act (section 508) to ensure that accessibility.

Discussion: NIDRR agrees that the ADA Regional Centers' Web sites and information technology tools and products must be fully accessible to individuals with disabilities, and will emphasize that requirement by adding a specific reference to it in Priority 1.

Changes: NIDRR has revised the opening paragraph of Priority 1 to state that each ADA Regional Center must ensure that all Web sites and information technology tools and products that the ADA Regional Center develops or maintains are in compliance with the standards developed under section 508 of the Rehabilitation Act. NIDRR has similarly revised the opening paragraph of Priority 2, as described elsewhere in this notice in the discussion of that priority.

Comment: One commenter recommended that NIDRR revise paragraph (b)(1) of Priority 1 to emphasize that the database maintained by the ADA KT Center must be fully accessible to individuals with disabilities.

Discussion: Priority 1 is not the appropriate place to specify the accessibility requirements that the ADA KT Center must meet to ensure the accessibility of the database or other information technology tools and products developed or maintained by the ADA KT Center. NIDRR received a number of similar comments with respect to Priority 2, the ADA KT Center priority, and will address those comments in the discussion of that priority.

Changes: None.

Comment: One commenter suggested that NIDRR specify in paragraph (b)(1) of Priority 1 permissible methods by which the ADA Regional Centers can submit data to the ADA KT Center's national database. Specifically, the commenter suggested that we make clear that ADA Regional Centers can submit data into the database by direct entry of data, as well as submission of batch data files from their regional databases. This commenter noted that a number of current ADA Regional Centers maintain separate databases, from which they produce, and submit to the national database, batch files of data about the ADA Network Services that they provide.

Discussion: We drafted Priority 1 to require the ADA Regional Center grantees to enter data directly into the database maintained by the ADA KT Center. Under this priority, ADA Regional Centers may not import batch files from their local databases into the ADA KT Center's database. Direct entry into a single ADA National Network database will facilitate the quality and consistency of data that the 10 ADA Regional Centers collect and will help ensure that we accurately describe and account for the services that they collectively provide to ADA stakeholders. By using a single database, rather than multiple ones, we avoid duplication of effort and the inefficient use of Federal resources.

Changes: None.

Comment: One commenter noted that the three required categories of data enumerated in paragraph (b)(1) of Priority 1 were negotiated and agreed upon by NIDRR, the ADA Regional Centers, and the Coordination, Outreach, and Research Center (CORC) during the 2006–2011 grant funding cycle. This commenter asked if the three data categories listed in paragraph (b)(1) of the priority will be recognized and required in the next funding cycle.

Discussion: Paragraph (b)(1) of Priority 1 identifies three primary categories of data that each ADA Regional Center must collect and enter into the ADA KT Center's database. It is true that these three categories of data were agreed upon during the 2006–2011 funding cycle. We have included these categories in this priority to provide all applicants with information about the data that NIDRR will require them to collect. Accordingly, entities awarded a grant under Priority 1 would be required to submit at least these categories of data during their grant cycle. We anticipate using this priority in the FY 2011 grant competition.

Changes: None.

Comment: Two commenters suggested that we revise paragraph (b)(1) of Priority 1 to require that the database maintained by the ADA KT Center be ''user-friendly'' so that the ADA Regional Centers can easily enter the required data.

Discussion: The database referenced by the commenter is operated and maintained by the ADA KT Center, which is funded under Priority 2. Priority 1 is therefore not the appropriate place to address the requirements of the database. NIDRR received a number of similar comments in response to Priority 2, the ADA KT Center priority, and will address those comments in the discussion related to that priority.

Changes: None.

Comment: One commenter questioned the necessity of funding ten regional centers under this priority. The commenter noted the potential programmatic efficiency and fiscal benefits of instead having a single ADA technical assistance center.

Discussion: NIDRR believes that the strength of the ADA National Network (that is, the 10 ADA Regional Centers working together with the ADA KT Center and ADA Collaborative Research Projects) exists in the ability of each ADA Regional Center to understand and address the unique regional and local constituent needs for ADA Network Services. Maintaining this regional structure facilitates regional and local relationships and partnerships that foster implementation of, and compliance with the ADA. At the same time, NIDRR aims to create efficiencies in the regional network through the activities of the ADA KT Center. The ADA KT Center is responsible for assisting the ADA Regional Centers to achieve optimal efficiency and impact of their training, technical assistance, and information dissemination activities.

Changes: None.

Comment: Two commenters recommended that, due to the low employment status of individuals with disabilities, NIDRR should prioritize ADA Network Services to U.S. businesses to stimulate the employment or re-employment of individuals with

disabilities during the economic recovery.

Discussion: Nothing in Priority 1 precludes grantees from prioritizing the provision of ADA Network Services, including providing training and technical assistance on Title I of the ADA, to employers. However, the requirements in the ADA also apply to a wide range of public services and public accommodations, and the ADA Regional Centers must provide ADA Network Services that are responsive to the needs of a wide variety of individuals and entities with rights and responsibilities under all Titles of the ADA.

Changes: None.

Comment: One commenter recommended that we revise Priority 1 to require the ADA Regional Centers to provide training and technical assistance focused on several specific topic areas. The commenter suggested that the ADA Regional Centers be required to provide training and technical assistance on accessible communication and information technology. The commenter also stated that the ADA Regional Centers should be required to provide training and technical assistance focusing on emergency preparedness for people with disabilities. This commenter also recommended that Priority 1 be revised to require training and technical assistance focusing on accessible voting for individuals with disabilities.

Discussion: Under Priority 1, the ADA Regional Centers are required to implement a sustained program of ADA Network Services that are designed to contribute to the improved understanding by ADA stakeholders of their rights and responsibilities under the ADA. In paragraph (a) of the priority, we make clear that we anticipate that ADA stakeholders will need information on longstanding ADA requirements as well as recent changes affecting those requirements and information on issues associated with ADA compliance in emerging areas, such as access to information technologies and emergency management services. The priority does not provide an exhaustive list of required topic areas because we expect each ADA Regional Center to design its services to meet the specific needs of the ADA stakeholders it serves. Accordingly, while not specifically listed in the priority, ADA Regional Centers should be prepared to provide training and technical assistance on the topics mentioned by these commenters, as well as on all aspects of employment of people with disabilities, and on the wide variety of public services and accommodations covered by the ADA.

Changes: None.

Comment: One commenter recommended that we revise Priority 1 to require the ADA Regional Centers to provide training and technical assistance focused on several specific topic areas. The commenter suggested that the ADA Regional Centers be required to provide training and technical assistance on accessible communication and information technology. The commenter also stated that the ADA Regional Centers should be required to provide training and technical assistance focusing on emergency preparedness for people with disabilities. This commenter also recommended that Priority 1 be revised to require training and technical assistance focusing on accessible voting for individuals with disabilities.

Discussion: Under Priority 1, the ADA Regional Centers are required to implement a sustained program of ADA Network Services that are designed to contribute to the improved understanding by ADA stakeholders of their rights and responsibilities under the ADA. In paragraph (a) of the priority, we make clear that we anticipate that ADA stakeholders will need information on longstanding ADA requirements as well as recent changes affecting those requirements and information on issues associated with ADA compliance in emerging areas, such as access to information technologies and emergency management services. The priority does not provide an exhaustive list of required topic areas because we expect each ADA Regional Center to design its services to meet the specific needs of the ADA stakeholders it serves. Accordingly, while not specifically listed in the priority, ADA Regional Centers should be prepared to provide training and technical assistance on the topics mentioned by these commenters, as well as on all aspects of employment of people with disabilities, and on the wide variety of public services and accommodations covered by the ADA.

Changes: None.

Comment: One commenter recommended that we revise Priority 1 to require the ADA Regional Centers to address the needs of transition-age youth in their information dissemination and training activities. The commenter noted that there is little Federal funding supporting programs that teach transition-age youth about their rights and responsibilities under the ADA. This commenter also recommended that Priority 1 require ADA Regional Centers to provide training and resources related to implementation of the U.S. Supreme Court's *Olmstead* decision. The commenter noted the importance of training in this area for youth with disabilities who lose home care services as they age out of childhood Medicare programs.

Discussion: NIDRR agrees that transition-age youth with disabilities are an important ADA stakeholder group, and that training and technical assistance related to implementation of the Supreme Court's *Olmstead* decision may be of specific assistance to them as they seek community supports and services. However, NIDRR does not require the provision of training and technical assistance to specific groups of ADA stakeholders, nor does it require training and technical assistance on specific public programs and policies such as those that implement the *Olmstead* decision. ADA Regional Centers should be prepared to provide training and technical assistance to the wide range of individuals and entities with rights and responsibilities under the ADA, including transition-age youth with disabilities, and on the wide variety of public services and accommodations covered by the ADA, as part of their general responsibility under the priority to implement a sustained program of ADA Network Services that improves understanding by ADA stakeholders of their rights and responsibilities under the ADA.

Changes: None.

Comment: One commenter stated that in the wake of recent Federal legislation such as the 2008 amendments to the ADA, and the recent health care reform legislation there is a need for training and information on the accessibility of recreation facilities and medical equipment frequently used by children and youth with disabilities. The commenter suggested that the ADA Regional Centers should provide this training and information.

Discussion: While NIDRR does not require the provision of training and technical assistance on specific topics such as accessibility of recreation facilities and medical equipment, we expect the ADA Regional Centers to tailor the ADA Network Services to the needs of the ADA stakeholders in its region. Therefore, ADA Regional Centers should be prepared to provide training and technical assistance on the wide variety of public services and accommodations covered by the ADA and this very well may include the accessibility of recreation facilities and medical equipment.

Changes: None.

Comment: Two commenters suggested that NIDRR revise Priority 1 to more clearly describe the role of the ADA Regional Centers as outlets for knowledge translation. One of these commenters suggested that NIDRR require each ADA Regional Center to develop a regional knowledge translation plan.

Discussion: NIDRR does not agree that a more prescriptive approach to the role of the ADA Regional Centers, or requiring each ADA Regional Center to develop a regional KT plan would improve ADA Network Services. The core function of the ADA Regional Centers is knowledge translation in that ADA Regional Centers must translate and deliver available ADA knowledge and information to ADA stakeholders through outreach, training, technical assistance, information dissemination, and capacity building. We believe that Priority 1 provides grantees with an appropriate framework to ensure these knowledge translation activities are carried out, while giving grantees the flexibility they need to provide services that are responsive to the specific knowledge and information needs of the ADA stakeholders in their regions.

Changes: None.

Comment: One commenter recommended that NIDRR revise Priority 1 to add ''legal updates'' to the list of information services and products to be delivered under paragraph (c)(1).

Discussion: NIDRR does not intend the list of materials, products, and services in paragraph (c)(1) of Priority 1 to be exhaustive. Nothing in the priority precludes ADA Regional Center applicants from proposing to provide legal updates under paragraph (c)(1). However, NIDRR does not have a sufficient basis for requiring all applicants to do so.

Changes: None.

Comment: One commenter recommended that we revise Priority 1 to require ADA Regional Centers to collaborate and coordinate with the Department's AT Act programs in their respective region when conducting training, technical assistance, outreach, and dissemination activities.

Discussion: NIDRR agrees that collaboration between the ADA Regional Centers and the AT Act programs may help in the provision of training and technical assistance, and in expanding outreach and dissemination efforts to ADA stakeholders. Nothing in Priority 1 precludes applicants from proposing partnerships with AT Act programs. At the same time, NIDRR does not have a sufficient basis for requiring all applicants to do so.

Changes: None.

Comment: One commenter recommended that the ADA Regional Centers collaborate with the Parent Training Information Centers and the Community Parent Resource Centers funded by the Department's Office of Special Education Programs (OSEP), and Parent Information and Training projects funded by the Department's Rehabilitation Services Administration (RSA), in order to provide ADA information and training to families of children and youth with disabilities.

Discussion: NIDRR agrees that these partnerships may facilitate the provision of ADA information to families and parents of children and youth with disabilities. Nothing in Priority 1 precludes applicants from proposing partnerships with Parent Training and Information Projects funded by OSEP, or Parent Training and Information Projects funded by the RSA. At the same time, NIDRR does not have a sufficient basis for requiring all applicants to do so. Applicants for the ADA Regional Centers have a large number of potential collaborators and dissemination partners. NIDRR does not want to limit applicants' choices by requiring partnerships with a limited set of entities.

Changes: None.

Comment: One commenter asked if two organizations can partner to apply for one ADA Regional Center, and if so, which applicant would be awarded the grant.

Discussion: Two or more organizations can partner to submit an application under the ADA Regional Center priority. Eligible applicants include States, public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations. In submitting an application, partnering applicants must designate which organization will serve as the lead applicant. Parts 75.127–75.129 of the Education Department General Administrative Regulations (EDGAR) describe requirements for group applications.

Changes: None.

Priority 2—ADA National Network Knowledge Translation Center

Comment: One commenter suggested that NIDRR specifically include RSA when referencing the Network's ''Federal partners'' in paragraph (a)(4) of Priority 2.

Discussion: NIDRR agrees that RSA is an important Federal partner. In paragraph (a)(4) of Priority 2, which relates to annual meetings of the ADA National Network Project Directors, we have only specifically identified the U.S. Department of Justice and the Equal Employment Opportunity Commission because these partners have direct responsibility for enforcing the ADA. However, we also make clear in paragraph (a)(4) of Priority 2 that the ADA KT Center may include ''other relevant agencies'' in its organization of annual meetings of the ADA Regional Centers' Project Directors meetings and RSA could certainly be included under this category.

Changes: None.

Comment: One commenter recommended that NIDRR require the ADA KT Center to partner with OSEP's network of Parent Training and Information Projects, as well as with RSA's Parent Training and Information Projects. The commenter noted that families of children with disabilities do not have adequate knowledge of the responsibilities of day care providers under the ADA, or of how families of children with disabilities may be protected by specific ADA provisions. The commenter recommended that we require the ADA KT Center to enter into these partnerships to ensure that targeted ADA information is provided to families and parents of children with disabilities, and to child care providers.

Discussion: NIDRR agrees that these partnerships may help ensure that ADA information is provided to families and parents of children with disabilities. Nothing in Priority 2 precludes applicants from proposing partnerships with OSEP's Parent Training and Information Projects or RSA's Parent Training and Information Projects. However, NIDRR does not have a sufficient basis for requiring all applicants to do so. Applicants for this ADA KT Center have a large number of potential collaborators and dissemination partners with whom they may wish to work. NIDRR does not want to limit applicants' choices by requiring partnerships with a limited set of entities.

Changes: None.

Comment: Two commenters noted that paragraph (a) of Priority 2 does not mention outreach and capacity building as key services provided by the ADA Regional Centers. The commenters recommended that NIDRR revise the priority to include those activities in the list of ADA Network Services.

Discussion: NIDRR agrees that outreach to ADA stakeholders, and efforts to build their capacity to facilitate implementation of and compliance with the ADA, are important services provided by the ADA

National Network, including the ADA KT Center.

Changes: NIDRR has revised paragraph (a) of Priority 2 to add outreach and capacity building to the list of required ADA Network Services.

Comment: One commenter noted the importance of the ADA KT Center's toll-free telephone number as a way for ADA stakeholders to contact the ADA National Network and receive technical assistance on the ADA. This commenter recommended that the ADA KT Center be required to maintain, administer, and provide logistical and financial support for the ADA National Network's toll-free telephone number.

Discussion: NIDRR agrees that this toll-free telephone number is an important resource for ADA stakeholders to contact the ADA National Network. Although NIDRR expects the 10 ADA Regional Centers and the ADA KT Center to negotiate and implement the most efficient means of maintenance and administration of this resource, it is beyond the scope of this priority to prescribe the mechanisms by which telephone services for the ADA National Network will be maintained.

Changes: None.

Comment: Three commenters recommended that we revise Priority 2 to require the ADA KT Center to ensure that all of its online information and information technology tools and products are accessible to individuals with disabilities. Specifically, the commenters recommended that NIDRR revise the priority to require that these online tools and products comply with standards developed in accordance with section 508 of the Rehabilitation Act to ensure their accessibility.

Discussion: NIDRR agrees that the Web sites and information technology tools and products of the ADA KT Center should be fully accessible to individuals with disabilities, and will emphasize the requirement by adding a specific reference to it in Priority 2.

Changes: NIDRR has revised the opening paragraph of Priority 2 to state that the ADA KT Center must ensure that all Web sites and information technology tools and products it develops or maintains are in compliance with the standards developed under section 508 of the Rehabilitation Act. NIDRR has similarly revised the opening paragraph of Priority 1, as described elsewhere in this notice, in the discussion of that priority.

Comment: Two commenters recommended that Priority 2 require that the ADA KT Center ensure that all of their online information and information technology tools and products are user-friendly.

Discussion: NIDRR agrees that the database maintained by the ADA KT Center under paragraph (d)(1) of Priority 2 should be easy to use for the ADA Regional Center staff who must use it. The users of this database are a small group of ADA Regional Center grantees. Under paragraph (d)(1) of Priority 2, the ADA KT Center is required to ensure a user-friendly interface for these users. For the other online information and information technology tools and products that are described in Priority 2, there are a large number of users with varying needs. Because ''user-friendliness'' can vary widely depending on the user, and in the absence of agreed-upon, enforceable standards for the ''user-friendliness'' of online information and information technology tools and products, NIDRR does not believe it can apply this requirement broadly as part of Priority 2.

Changes: None.

Comment: Two commenters suggested that the ADA KT Center should be required to collaborate with the ADA Regional Centers under paragraph (b)(2) of Priority 2, to identify knowledge gaps among ADA stakeholders and related ADA research topics.

Discussion: Priority 2 requires the ADA KT Center to collaborate directly with ADA stakeholders to help identify ADA knowledge gaps. Although Proposed Priority 2 did not explicitly say so, the ADA KT Center may propose to collaborate with the ADA Regional Centers to help identify ADA knowledge gaps among ADA stakeholders, a point we will clarify in the final priority. However, NIDRR believes that making this collaboration a requirement could limit opportunities and resources for other appropriate and innovative collaborations related to this task. For this reason, we will not require this collaboration under the priority.

Changes: NIDRR has revised paragraph (b)(2) of Priority 2 to state that the ADA KT Center may collaborate with the ADA Regional Centers to help identify ADA knowledge gaps.

Comment: Two commenters suggested that, under paragraph (d)(1) of Priority 2, the ADA KT Center should be required to collaborate with the ADA Regional Centers to continue the operation and maintenance of the existing database for data submitted by each of the ADA Regional Centers.

Discussion: The operation and maintenance of a database involves a variety of ongoing tasks to ensure that software and hardware are fully functional and available for use. These tasks to be carried out by the ADA KT Center do not require direct collaboration with the ADA Regional Centers. However, under paragraph (d)(4) of Priority 2, the ADA KT Center is required to collaborate with NIDRR and the ADA Regional Centers to ensure that the database is accurate, comprehensive, easy-to-use, and up-to-date.

Changes: None.

Comment: Three commenters suggested that the ADA KT Center should be required to collaborate with the ADA Regional Centers under paragraph (d)(2) of Priority 2, in order to help identify the training and technical assistance needs related to analysis and use of the database.

Discussion: NIDRR agrees that the ADA KT Center should be required to work with the ADA Regional Centers to identify the ADA Regional Centers' database-related training and technical assistance needs so that the ADA KT Center is better able to tailor the training and technical assistance services it provides to the needs of the ADA Regional Centers.

Changes: NIDRR has revised paragraph (d)(2) of Priority 2 to require the ADA KT Center to identify the database-related training and technical assistance needs of the ten ADA Regional Centers.

Comment: Three commenters suggested that NIDRR revise paragraph (d)(2) of Priority 2 to specify that the provision of database-related training and technical assistance should be on an as-needed basis.

Discussion: NIDRR agrees that the ADA KT Center should provide database-related training and technical assistance to the ADA Regional Centers on an as-needed basis. NIDRR also believes that the ADA KT Center must provide regular, consistent training and technical assistance to all 10 ADA Regional Centers to help ensure the quality and consistency of data that are gathered and entered directly into the database by the Regional Centers.

Changes: NIDRR has revised paragraph (d) of Priority 2 to specify that the ADA KT Center must provide formal, scheduled training and technical assistance to all 10 ADA Regional Centers on the use of the database and that the ADA KT Center must provide targeted database-related training and technical assistance to individual centers on an as-needed basis.

Comment: Three commenters noted that paragraphs (d)(3) and (d)(4) of Priority 2 appear to be duplicative and suggested that NIDRR delete the data-quality monitoring requirements in paragraph (d)(3) of Priority 2.

Discussion: NIDRR does not agree that these paragraphs have duplicative

requirements. Paragraph (d)(3) requires regular and ongoing monitoring of data quality. Monitoring for data quality includes, for example, analyses to determine rates of missing or incomplete data, and analyses to determine whether data fall within the specified ranges of response options. The requirements in paragraph (d)(4) are broader, and involve ongoing discussions to ensure that the data fields and response options accurately reflect up-to-date ADA policies and regulations, as well as discussions about how to optimize the user-friendliness of the database.

Changes: None.

Comment: Three commenters asked NIDRR to require that the database described in paragraph (d)(1) of Priority 2 allow the ADA Regional Centers to generate reports that support their Annual Performance Reporting requirements.

Discussion: NIDRR believes that this request is already sufficiently covered by the requirement in paragraph (d)(1) of Priority 2, which states that the database must provide data retrieval capabilities. The detailed information in the database can be used by the ADA Regional Centers aggregated to produce reports that meet ADA Regional Centers' more general annual performance reporting requirements for NIDRR.

Changes: None.

Comment: Two commenters asked whether NIDRR intended to transfer the database described under paragraph (d)(1) from the DBTAC CORC to the new ADA KT Center. The commenters asked NIDRR to provide details about the existing database software framework and design so that applicants can prepare a cost estimate for the requirement to operate and maintain the database.

Discussion: NIDRR does intend to transfer the database described under paragraph (d)(1) to the new ADA KT Center. NIDRR will make information about the database software framework and design available to interested applicants. Applicants that are interested in receiving this information should contact the person listed under *FOR FURTHER INFORMATION CONTACT* in this notice.

Changes: None.

Comment: One commenter noted that the existing database described in paragraph (d)(1) of Priority 2 is designed to collect information about the delivery of ADA Network Services. This commenter recommended that NIDRR require the ADA KT Center to work with the ADA Regional Centers to design a system for measuring the outcomes of ADA Network Services.

Discussion: NIDRR agrees that the addition of a formal mechanism for measuring the outcomes of the ADA Network Services would benefit the Network and its stakeholders and will therefore make a change to this effect in paragraph (d) of Priority 2.

Changes: NIDRR has added a provision to paragraph (d) to require the development and implementation of a process and system for measuring and tracking the outcomes of ADA Network Services.

Comment: One commenter recommended that NIDRR revise paragraph (a)(2) of Priority 2 to further specify that the ADA KT Center must work with each individual ADA Regional Center to develop regional KT plans, and then work with the 10 ADA Regional Centers to organize the most effective strategies to optimize the efficiency and impact of the ADA Network Services.

Discussion: NIDRR does not agree that the outcome of optimal efficiency and impact of the ADA National Network Services would be facilitated by requiring each ADA Regional Center to work with the ADA KT Center to develop a regional KT plan. Such a requirement would be redundant with the core function of the ADA Regional Centers, which is to translate and deliver available ADA information and knowledge to ADA stakeholders.

Changes: None.

Comment: Two commenters suggested that NIDRR revise paragraph (d)(1) of Priority 2 to specify the methods by which the ADA Regional Centers will submit data to the database to include direct entry of data, and submission of batch files.

Discussion: Priority 2, the ADA KT Center priority, is not the appropriate place to specify the methods by which the ADA Regional Centers will submit data to the database. NIDRR received a number of similar comments on Priority 1, the ADA Regional Center priority, and addressed those comments there.

Changes: None.

Comment: One commenter recommended that the ADA KT Center consider the impact of policy and practice on ADA research.

Discussion: NIDRR agrees that ADA research should be informed by, and be relevant to, ADA policy and practice. Under paragraph (b)(2) of Priority 2, the ADA KT Center must collaborate with ADA stakeholders to determine ADA knowledge gaps. Nothing in the priority precludes applicants from proposing collaborations with policymakers, service providers, and other relevant stakeholders to determine knowledge gaps and shape future ADA research topics.

Changes: None.

Comment: One commenter recommended that NIDRR revise paragraph (a)(3) of Priority 2 to allow applicants to either propose to maintain the current ADA document portal, or to propose an alternative mechanism so that ADA Regional Centers and ADA stakeholders can have easy access to ADA documents that they need.

Discussion: NIDRR agrees that applicants for the ADA KT Center should be allowed to propose alternatives and improvements to the current ADA document portal.

Changes: NIDRR has revised paragraph (a)(3) of Priority 2 to allow applicants to propose and implement new methods that allow fast and efficient identification and retrieval of documents relevant to the ADA.

Priority 3—ADA National Network Collaborative Research Projects

Comment: Several commenters questioned the eligibility requirement in the opening paragraph of Priority 3, which states that eligibility is restricted to applicants that have received a grant under the ADA Regional Center priority. Three commenters suggested that other entities, including other NIDRR grantees with expertise that is relevant to the ADA, should be allowed to apply. Another commenter questioned the eligibility limitation because, in the commenter's view, the ADA Regional Centers are not able to conduct research that is national in scope.

Discussion: NIDRR's ADA National Network program is evolving into a network of grantees that is capable of conducting multi-site research and generating new knowledge of national significance related to ADA implementation and compliance. NIDRR has designed Priority 3 to utilize this network. Therefore, only ADA Regional Centers are eligible to apply as lead applicants under Priority 3. While the lead applicant must be an ADA Regional Center, applicants are free to include research partners that are not part of the ADA National Network in their research proposal.

With regard to the commenter that stated that the ADA Regional Centers are not able to provide research that is national in scope, NIDRR believes that the network of ADA Regional Centers does have the capacity to conduct high-quality, multi-site ADA research that is of national significance. NIDRR requires lead applicants to collaborate with three or more ADA Regional Centers to help ensure that the research is of significance to all U.S. regions.

Changes: None.

Comment: One commenter suggested that restricting the eligibility to ADA Regional Centers in Priority 3 would limit applicants' choice of research partners.

Discussion: Nothing in Priority 3 restricts applicants in their choice of research partners. While applicants must propose to collaborate with at least three additional ADA Regional Centers, they may also propose an unlimited number of research partners that are not part of the ADA National Network.

Changes: None.

Comment: One commenter asked whether each ADA Regional Center is expected to participate in an ADA Collaborative Research Project.

Discussion: ADA Regional Centers are not required to participate in an ADA Collaborative Research Project.

Changes: None.

Comment: One commenter asked NIDRR to set minimum budget commitments for ADA Regional Centers who participate in ADA Collaborative Research Projects.

Discussion: NIDRR has not set minimum budgets for ADA Regional Centers that choose to participate in ADA Collaborative Research Projects because the costs for the ADA Regional Center's participation in an ADA Collaborative Research Project are covered under the Collaborative Research grant. The recipients of the Collaborative Research Project grants under Priority 3 are expected to subcontract with the other participating ADA Regional Centers.

Changes: None.

Comment: One commenter asked whether, under Priority 3, the new ADA KT Center would be eligible to apply for an ADA Collaborative Research grant.

Discussion: Receiving an award under Priority 2, the ADA KT Center priority, does not make that grantee eligible for an award under the ADA National Network Collaborative Research Projects priority. An applicant must have received a grant under Priority 1, the ADA National Network Regional Center priority, in order to be eligible for an ADA National Network Collaborative Research grant.

Changes: None.

Comment: One commenter expressed concern that NIDRR may be focusing exclusively on employment-related ADA research, to the exclusion of ADA research that focuses on participation and community living or health and function outcomes. The commenter asked NIDRR to add language to Priority 3 to emphasize that the priority is not solely focused on employment-related research.

Discussion: Nothing in Priority 3 precludes applicants from focusing their ADA research on questions related to participation and community living outcomes, or health and function outcomes. The priority makes clear that applicants must conduct research on one or more areas in the ADA, and may focus their research on one or more titles in the ADA—not just employment-related research that would be relevant under Title I. NIDRR does not believe that there is anything in Priority 3 that emphasizes one area of ADA research over others.

Changes: None.

Comment: One commenter suggested that Priority 3 emphasize research that explores the connections and emerging policy issues that arise between the ADA and other statutes that promote inclusion of people with disabilities, including the Air Carrier Access Act, Fair Housing Act, Transportation Act, and Communications Act.

Discussion: Nothing in Priority 3 precludes applicants from proposing collaborative research on these policy topics. However, NIDRR does not have sufficient basis to require all applicants to do so.

Changes: None.

Comment: One commenter asked whether the ADA Collaborative Research Projects would be restricted to large database exploration, or if development, intervention, and utility studies would be encouraged.

Discussion: Priority 3 does not restrict the type of research studies that can be proposed and conducted. The priority only specifies that applicants must use appropriate and clearly-identified research designs to generate reliable and valid findings.

Changes: None.

Final Priorities

Priority 1—Americans with Disabilities Act (ADA) National Network Regional Centers

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of 10 Disability and Rehabilitation Research Projects (DRRPs) to serve as the ADA National Network Regional Centers (formerly known as Disability Business Technical Assistance Centers (DBTACs)), one within each of the 10 U.S. Department of Education regions that cover the United States. Together, the 10 ADA National Network Regional Centers (ADA Regional Centers), along with the ADA National Network Knowledge Translation Center (ADA KT Center, funded under a separate priority) and the ADA Collaborative Research Projects (funded under a separate priority) will comprise the ADA National Network.

Each ADA Regional Center must ensure that all Web sites and information technology tools and products that the ADA Regional Center develops or maintains are in compliance with standards developed under section 508 of the Rehabilitation Act (29 U.S.C. 794d).

Each ADA Regional Center must be designed to contribute to the following outcomes:

(a) Improved understanding by ADA stakeholders of their rights and responsibilities under the ADA. Each ADA Regional Center must contribute to this outcome by implementing a sustained program of outreach, training, technical assistance, information dissemination, and capacity building (collectively, ADA Network Services), aimed at ADA stakeholders, including local, regional, and national groups representing such stakeholders. NIDRR anticipates that ADA stakeholders will need information on both longstanding ADA requirements as well as recent legislative and regulatory changes affecting those requirements, such as the ADA Amendments Act, the revised title II and III regulations (28 CFR Parts 35 and 36, respectively), the anticipated revisions to the title I regulations (29 CFR Part 1630), and information on issues associated with ADA compliance in emerging areas such as access to information technologies and emergency management services. For purposes of this priority, the term ''ADA stakeholders'' refers to individuals and entities with rights and responsibilities under the ADA.

(b) Improved understanding of ADA stakeholders' need for and receipt of ADA Network Services over time, including services to address emerging issues related to compliance with ADA requirements. Each of the 10 ADA Regional Centers must contribute to this outcome by—

(1) Entering, directly into the database maintained by the ADA KT Center, the required data about each of the ADA Network Services that it provides. These data must include, but are not limited to, (1) the ADA title or titles, regulations, and specific topics that are addressed by the ADA Network Services provided, (2) the modality of service provision (*e.g.*, in-person presentation, webinar), and (3) non-personally identifiable information about the recipient or recipients of the ADA Network Services;

(2) Collaborating with the ADA KT Center to analyze data about ADA stakeholder requests for information and

the services that the ADA Regional Center provides, and applying new knowledge from those analyses to further tailor and improve the provision of ADA Network Services; and

(3) Identifying and implementing other appropriate methods for assessing the needs of ADA stakeholders.

(c) Enhanced efficiency and effectiveness of ADA Network Services. Each of the ten ADA Regional Centers must contribute to this outcome by—

(1) Partnering with the ADA KT Center and other ADA Regional Centers to develop, provide, and distribute ADA training and technical assistance materials, and other informational products and services. These materials, products, and services include, but are not limited to, the ADA National Network Web site, as well as materials, products, and services that are relevant to ADA stakeholders in multiple regions.

(2) Attending and participating in the annual meetings of the ADA Regional Centers' Project Directors, to be held in Washington, DC.

Priority 2— Americans With Disabilities Act (ADA) National Network Knowledge Translation Center (ADA KT Center)

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of a Disability and Rehabilitation Research Project (DRRP) to serve as an Americans with Disabilities Act (ADA) National Network Knowledge Translation Center (ADA KT Center). For purposes of this priority, the term ''ADA stakeholders'' refers to individuals and entities with rights and responsibilities under the ADA.

The ADA KT Center must ensure that all Web sites and information technology tools and products that it develops or maintains are in compliance with standards developed under section 508 of the Rehabilitation Act (29 U.S.C. 794d).

Under this priority, the ADA KT Center must be designed to contribute to the following outcomes:

(a) Optimal efficiency and impact of the ADA National Network's outreach, training, technical assistance, information dissemination, and capacity building activities (ADA Network Services). The ADA KT Center must contribute to this outcome by—

(1) Establishing and implementing an online system to enable the 10 ADA Regional Centers to share training and technical assistance documents and other materials;

(2) Facilitating the joint development of ADA products and materials by the 10 ADA Regional Centers in content areas in which it is possible to maximize resources and avoid duplication of efforts;

(3) Serving as the central repository for ADA National Network information and products, and maintaining ADA Network document portals and Web sites currently funded by NIDRR. In this role, the ADA KT Center may propose new methods and approaches to ensure fast and efficient identification and retrieval of ADA documents by ADA Regional Centers and ADA stakeholders; and

(4) Organizing and providing logistical and financial support for annual meetings of the ADA Regional Centers' Project Directors in Washington, DC. These meetings will facilitate collaboration between the 10 ADA Regional Centers, and will allow the Project Directors of the ADA Regional Centers to meet and share information directly with their Federal partners in the U.S. Department of Justice, Equal Employment Opportunity Commission, and other relevant agencies.

(b) Increased use of available ADA-related research findings to inform behavior, practices, or policies that improve equal access in society for individuals with disabilities. The ADA KT Center must contribute to this outcome by—

(1) Systematically reviewing existing ADA-related research. The ADA KT Center must identify and conduct systematic reviews of individual ADA research studies to assess the quality of those studies and to synthesize the findings from those studies. In so doing, the ADA KT Center must select appropriate review methods, taking into account the type of research and stage of knowledge development in each area of ADA research. These areas may include, but are not limited to research on specific titles of the ADA, research on ADA issues in specific industries, and research on ADA issues that are relevant to individuals with specific types of disabilities; and

(2) Identifying, for future research, topics that would provide new knowledge or tools to help individuals with rights and responsibilities under the ADA (ADA stakeholders) implement and comply with the ADA. The ADA KT Center must identify future research topics based on the information gathered through the systematic reviews conducted under paragraph (b)(1) of this priority, in combination with information about gaps in ADA stakeholder knowledge related to ADA implementation. The ADA KT Center must collaborate with ADA stakeholders, which may include the ADA Regional Centers, to determine these knowledge gaps.

(c) Increased awareness and utilization of ADA-related research findings by appropriate ADA stakeholder groups. The ADA KT Center must contribute to this outcome by—

(1) Combining or adapting knowledge translation approaches from the existing literature to disseminate and promote the use of ADA-related research generated by the ADA National Network Collaborative Research Projects (funded under a separate priority) and other NIDRR grantees as appropriate; and

(2) Organizing and providing logistical and financial support for a conference on ADA-related research. This conference must highlight research findings produced by the ADA National Network Research Collaborative Research Projects and other ADA researchers. This conference must take place in year five of the ADA National Network grant cycle.

(d) Improved understanding of ADA stakeholders' need for and receipt of ADA Network Services over time, including services to address emerging issues related to compliance with ADA requirements. The ADA KT Center must contribute to this outcome by—

(1) Continuing the operation and maintenance of the existing database for data submitted by each of the ADA Regional Centers. This database was previously known as the Outcome Measurement System, and is presently operated by the DBTAC Coordination, Outreach, and Research Center (CORC). This database was designed to contain data on each DBTAC's core activities, including training, technical assistance, public awareness events, and dissemination of materials. In operating and maintaining this database, the ADA KT Center must ensure confidentiality of personally identifiable information, and provide quality control and data-retrieval capabilities, using cost-effective technologies and a user-friendly interface;

(2) Working with the 10 ADA Regional Centers to identify their database-related training and technical assistance needs, and provide training and technical assistance on analyzing data and using the database. The ADA KT Center must provide this formal, scheduled training and technical assistance to all 10 ADA Regional Centers. The ADA KT Center must also provide targeted database-related training and technical assistance to individual ADA Regional Centers on an as-needed basis;

(3) Monitoring the quality of data submitted by the ADA Regional Centers;

(4) Collaborating with NIDRR and the ADA Regional Centers to ensure that the database is accurate, comprehensive, easy to use, and up-to-date; and

(5) Working with NIDRR and the ADA Regional Centers to develop and implement a system for measuring and tracking the outcomes of ADA National Network Services.

Priority 3—ADA National Network Collaborative Research Projects

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of Disability and Rehabilitation Research Projects (DRRP) to serve as National ADA Network Collaborative Research Projects (Collaboratives). Each Collaborative must be designed to contribute to knowledge of national significance related to ADA implementation and compliance. To be eligible under this priority, an applicant must have received a grant under the ADA National Network Regional Center priority (Priority 1). Each Collaborative must conduct research using the regional structure of the ADA National Network as a foundation for multi-site research that would inform ADA implementation efforts. Each Collaborative must consist of the applicant and an additional three or more of the NIDRR-funded ADA Regional Centers (for a minimum of four ADA Regional Centers). In addition, each Collaborative may include researchers who are not a part of the ADA National Network. For purposes of this priority, the term ''ADA stakeholders'' refers to individuals and entities with rights and responsibilities under the ADA. Each Collaborative must be designed to contribute to the following outcomes:

(a) Improved knowledge related to ADA implementation. The Collaborative must contribute to this outcome by—

(1) Conducting research on one or more areas in the ADA. These areas may include, but are not limited to research on specific titles of the ADA, research on ADA issues in specific industries, or research on ADA issues that are relevant to individuals with specific types of disabling conditions;

(2) Addressing research questions or hypotheses of national significance that are directly relevant to individuals and entities with rights and responsibilities under the ADA (ADA stakeholders); and

(3) Using appropriate and clearly-identified research designs to generate reliable and valid findings.

(b) Improved ADA stakeholder awareness and utilization of research findings produced by the ADA National Network. The Collaboratives must contribute to this outcome by—

(1) Preparing research products (*e.g.,* articles and presentations) that describe the findings of the Collaborative's research. The Collaboratives must also share these research products and research findings with the ADA Regional Centers and the ADA KT Center, which the Department intends to fund under separate priorities, for further dissemination to ADA stakeholders; and

(2) Participating in the ADA National Network research conference.

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)).

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 these priorities, 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 final regulatory action.

The potential costs associated with this final 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 final regulatory action, we have determined that the benefits of the final priorities justify the costs.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects (DRRPs) have been well established over the years in that similar projects have been completed successfully. These final priorities will provide training and technical assistance related to the Americans with Disabilities Act (ADA), and generate new knowledge through research and development. Another benefit of these final priorities is that the establishment of the ADA National Network will improve the lives of individuals with disabilities. The new DRRPs will generate, disseminate, and promote the use of information about the ADA that will improve the options for individuals with disabilities to perform regular activities in the community.

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 24, 2011.

Andrew J. Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–16392 Filed 6–28–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy, DOE.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, July 25, 2011; 1 p.m.—5 p.m.

Tuesday, July 26, 2011; 8:30 a.m.—4:30 p.m.

ADDRESSES: Savannah Rapids Pavilion, 3300 Evans to Locks Road, Martinez, GA 30907.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; *Phone:* (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Monday, July 25, 2011

1 p.m. Combined Committee Session.
5 p.m. Adjourn.

Tuesday, July 26, 2011

8:30 a.m. Approval of Minutes, Chair Update, Public Comment Session, Agency Updates, Administrative Committee Report, Nuclear Materials Committee Report, Strategic and Legacy Management Committee Report, Public Comment Session.

12 p.m. Lunch Break.

1 p.m. Waste Management Committee Report, Facility Disposition and Site Remediation Committee Report, Public Comment Session.

4:30 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda.

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/meeting_summaries_2011.html.*

Issued at Washington, DC on June 23, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–16306 Filed 6–28–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. The questions in the collection instrument are available upon request to *Jennifer.DeCesaro@ee.doe.gov.*

DATES: Comments regarding this proposed information collection must be received on or before August 29, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to: Jennifer DeCesaro, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Fax: 202–586–8148, *Jennifer.DeCesaro@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer DeCesaro, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, *Fax:* 202–586–8148, *Jennifer.DeCesaro@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. New; (2) Information Collection Request Title: Solar Market Indicators: Data collection from local jurisdictions and other relevant regional stakeholders (*e.g.* non-profit organizations, state energy offices) on policies and processes that contribute to solar system costs; (3) Type of Request: New collection; (4) Purpose: The DOE will use this information to establish a baseline for key solar market indicators and process contributions to the non-hardware costs for solar installations, an effort that has not been formally undertaken by the federal government or industry to date. Likely respondents are local jurisdictions, state governments, and non-profit organizations; (5) Annual Estimated Number of Respondents: 35; (6) Annual Estimated Number of Total Responses: 35; (7) Annual Estimated Number of Burden Hours: 210; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $0.

Statutory Authority: These activities are authorized under the Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978, Pub. L. 95–590, codified at 42 U.S.C. 5581 *et seq.,* and the Department of Energy Organization Act, Pub. L. 95–91, as amended, codified at 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC on June 23, 2011.

Ramamoorthy Ramesh,

Program Manager, Solar Energy Technologies Program, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2011–16307 Filed 6–28–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW–005]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Waiver to BSH Corporation From the Department of Energy Residential Dishwasher Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. DW–005) that grants to BSH Corporation (BSH) a waiver from the DOE dishwasher test procedure for certain basic models containing integrated or built-in water softeners. Under today's decision and order, BSH shall be required to test and rate its dishwashers with integrated water softeners using an alternate test procedure that takes this technology into account when measuring energy and water consumption.

DATES: This Decision and Order is effective June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7796. *E-mail: mailto: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants BSH a waiver from the applicable residential dishwasher test procedure in 10 CFR part 430, subpart B, appendix C for certain basic models of dishwashers with built-in or integrated water softeners, provided that BSH tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits BSH from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions of the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on June 21, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: BSH Corporation (Case No. DW–005).

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' [1] 42 U.S.C. 6291–6309. Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3). The test procedure for residential dishwashers, the subject of today's notice, is contained in 10 CFR part 430, subpart B, appendix C.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. BSH's Petition for Waiver: Assertions and Determinations

On February 4, 2011, BSH filed a petition for waiver from the test procedure applicable to residential dishwashers set forth in 10 CFR part 430, subpart B, appendix C. The products covered by the petition employ integrated or built-in water softeners. BSH asserted that the DOE test procedure does not account for the energy and water use incurred by water softener regeneration. BSH's petition was published in the **Federal Register** on March 30, 2011. 76 FR 17639. DOE received one comment, from Whirlpool Corporation (Whirlpool), on the BSH petition, discussed below.

BSH claims that water softeners can prevent consumer behaviors that consume additional energy and water. BSH asserts that a dishwasher equipped with a water softener will minimize pre-rinsing and rewashing, and that consumers will have less reason to run their dishwasher through a clean-up cycle periodically. Further, BSH claims that the amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but that it varies significantly depending on the adjustment of the softener.

The regeneration operation takes place infrequently, and the frequency is related to the level of water hardness. According to Whirpool's petition for waiver, which DOE granted October 7, 2010 (75 FR 62127), including water use attributable to the regeneration operation in the measurement of water consumption during an individual energy test cycle could overstate water

[1] For editorial reasons, on codification in the U.S. Code, part B was re-designated Part A.

use by as much as 12 percent, and energy use by as much as 6 percent. In view of the small amount of water consumed during softener regeneration and the relative infrequency of the regeneration operation, BSH requests approval to measure water consumption of its dishwashers equipped with water softeners without including the water consumed by the dishwasher during softener regeneration. This is the approach used in European Standard EN 50242, ''Electric Dishwashers for Household Use—Methods for Measuring the Performance'' (EN 50242), which BSH recommends.

The current DOE test procedure registers water consumption from softener regeneration only in a small, variable fraction of test runs, producing variable results. As a result, and using the information provided by BSH, DOE has determined that test results may provide materially inaccurate comparative data. DOE has considered EN 50242 as an alternate test procedure. This standard excludes water use due to softener regeneration from its water use efficiency measure. Use of EN 50242 would provide repeatable results, but would underestimate the energy and water use of these models. DOE notes that if water consumption of a regeneration operation is to be apportioned across all cycles of operation, then manufacturers would need to make calculations regarding average water hardness and average water consumptions due to regeneration operations that are not currently provided for or allowed by the test procedure. In its petition, BSH estimated that, on average, 23.8 gallons/year of water and 4 kWh/year would be consumed in softener regeneration. These values are based on internal testing conducted by BSH, and are similar to the values submitted by Whirlpool in its petition.

Whirlpool's comment pointed out the BSH softener regeneration measurement of 5.0 liters of water per regeneration, which is approximately double the 2.4 liters of water used by a Whirlpool dishwasher per regeneration. The total energy and water use claimed by BSH is nearly equal to that of Whirlpool because BSH included a 50% deduction in energy and water based on an estimate that at least 50% of homes already have a water softening system. BSH submitted no data to support this claim. In the alternate test procedure DOE granted in July 2010 in response to BSH's application for interim waiver, DOE added the constant values of 23 gallons/year of water and 4 kWh/year to the energy consumption measured by appendix C, including the 50% deduction. To maintain the same methodology used in the Whirlpool waiver, DOE is not including the 50% deduction in its final waiver. Therefore, in this waiver the constant values added are 47.6 gallons per year for water consumption and 8.0 kWh per year for energy consumption.

III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the BSH petition for waiver. The FTC staff did not have any objections to granting a waiver to BSH.

IV. Conclusion

After careful consideration of all the material that was submitted by BSH, the comment submitted by GE, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the BSH Corporation (Case No. DW–005) is hereby granted as set forth in the paragraphs below.

(2) BSH shall not be required to test or rate the following models on the basis of the current test procedures contained in 10 CFR part 430, subpart B, appendix C. Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

Bosch brand:

- *SHX68E05UC;*
- *SHE68E05UC;*
- *SHX68E15UC;*
- *SHE68E15UC;*
- *SHV68E13UC;*
- *SGE63E0#UC;*
- *SHX58E15UC;*
- *SHV58E13UC;*
- *SHX58E2#UC.*

Gaggenau brand:

- *DF261760;*
- *DF260760.*

Kenmore brand:

- *630.13993.01#;*
- *630.13023.01#;*
- *630.13003.01#.*

(3) BSH shall be required to test the products listed in paragraph (2) above according to the test procedures for dishwashers prescribed by DOE at 10 CFR part 430, appendix C, except that, for the BSH products listed in paragraph (2) only:

In Section 4.1, *Test cycle,* add at the end, ''The start of the DOE test should begin on a cycle immediately following a regeneration cycle.''

In Section 4.3, the water energy consumption, W or Wg, is calculated based on the water consumption as set forth below:

§ 4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix. Where the regeneration of the water softener depends on demand and water hardness, and does not take place every cycle, BSH shall measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If a regeneration operation takes place within the test, the water consumed by the regeneration operation shall be disregarded when declaring water and energy consumption. Constant values of 47.6 gallons/year of water and 8 kWh/year of energy shall be added to the values measured by appendix C.

(4) Representations. BSH may make representations about the energy use of its dishwashers containing integrated or built-in water softeners for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is granted for only those models specifically set out in BSH's petition, not future models that may be manufactured by BSH. BSH may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional dishwasher models for which it seeks a waiver from the DOE test procedure. Grant of this waiver also does not release BSH from the certification requirements set forth at 10 CFR part 429.

(7) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on June 21, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–16301 Filed 6–28–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Revision to the Final Principles of Integrated Resource Planning for Use in Resource Acquisition and Transmission Planning

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice; request for comment.

SUMMARY: Western Area Power Administration (Western) published proposed Principles for Integrated Resource planning (IRP) for use in its acquisition of resources (supply-side and demand-side) and transmission planning in the **Federal Register** on December 6, 1994. After considering public comments on the proposed principles, Western adopted the Final Principles of IRP under which project-specific resource acquisition and transmission planning principles would be developed. The Final Principles of IRP were published in the **Federal Register** on June 9, 1995, and became effective on July 10, 1995.

Through this notice, Western is requesting comments on the proposed Western-wide evaluation criteria and procedures that Western will use for future resource acquisitions instead of the current principle, which calls for developing project-by-project criteria. Western is also requesting comments on its proposal to eliminate the transmission planning principles set forth in the Final Principles of IRP.

DATES: Western must receive written comments on the proposed revision to the Final Principles of IRP at the address below by 4 p.m., MDT, on July 29, 2011. Western reserves the right not to consider any comments received after the prescribed date and time.

Western will hold a public meeting to solicit input on Western's revision to the Final Principles of IRP for Use in Resource Acquisition and Transmission Planning. The meeting will address the proposed evaluation criteria and procedures Western will use for long-term resource acquisition and the elimination of the transmission planning principles as set forth in the Final Principles of IRP. The public meeting will be held on: July 21, 2011, 8:30 a.m., MDT, in Lakewood, Colorado. The meeting will also be available by conference call and webcast during that time.

ADDRESSES: Submit written comments regarding this proposed Revision to the Final Principles of IRP to Ms. Julia L. Kyriss, Colorado River Storage Project (CRSP) Manager, CRSP Management Center, 150 East Social Hall Avenue, Suite 300, Salt Lake City, Utah 84111–1580. Comments may also be e-mailed to *finalprinciples@wapa.gov* or faxed to (801) 524–5017.

The public meeting location will be the Western Area Power Administration, Corporate Services Office, 12155 West Alameda Parkway, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Fronk, CRSP Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, Utah 84111–1580, telephone (801) 524–6383, e-mail *fronk@wapa.gov.*

SUPPLEMENTARY INFORMATION: A public process to develop principles of IRP for Western resource acquisition and transmission planning began with publication of draft principles of IRP in the **Federal Register** on December 6, 1994 (59 FR 62724). A public information and comment forum was held in Denver, Colorado, on January 12, 1995, to explain the proposed principles and receive comments on the proposal. Written comments on the proposal were received through March 7, 1995. The Final Principles of IRP were published in the **Federal Register**on June 9, 1995 (60 FR 30533). The Final Principles of IRP have served as the policy under which Western develops principles for acquiring project-specific, long-term resources and for public participation in certain Western projects to increase transmission capability. Western's current Final Principles of IRP are available at: *http://www.wapa.gov/powerm/pmirpwestern.htm.*

Western believes it is necessary to define further the process for acquiring project-specific, long-term resources by establishing evaluation criteria to be used when considering the purchase of new generation resources and eliminating the principles set forth in the Final Principles of IRP associated with transmission planning.

Western's historic resource acquisitions have been primarily project-specific, short-term purchases of supplemental resources to firm variable hydropower generation. For long-term resource acquisition, Western believes developing evaluation criteria and procedures that will be used for future resource acquisition represents prudent planning. The ability to make long-term purchases expeditiously when the need arises, whether due to the unavailability of generation from Federal hydropower facilities or lost generation attributable to drought conditions, this provides Western greater flexibility in securing adequate and reliable power to meet obligations to its customers. The criteria Western is proposing are set forth in more detail later in this notice.

For transmission planning, Western believes that existing stakeholder involvement in its planning efforts used by regional and sub-regional planning entities and its Open Access Transmission Tariff (OATT) render the requirement set forth in the Final Principles of IRP redundant and unnecessary. The Final Principles of IRP applicable to Western's transmission planning principles do not deal with new generation resources, but apply only to new or upgraded transmission facilities over a defined threshold. Through the planning efforts outlined below, Western will meet the intent of the Final Principles of IRP and its other planning obligations.

Since finalizing the Final Principles of IRP for transmission planning in 1995, the transmission industry has undergone significant change. Several of the original comments Western received during the public process to develop the Final Principles of IRP requested that Western avoid the duplication of efforts related to transmission planning. At the time the Final Principles of IRP were adopted, however, Western did not believe the procedures for public participation in transmission planning were duplicative. In light of the current vigorous involvement of stakeholders in regional and sub-regional transmission planning entities and the detailed transmission planning process set forth in Western's OATT, as described below, Western now believes that those original comments have merit, and the transmission planning principles established under the Final Principles of IRP can be eliminated.

Specifically, Western is actively involved in several transmission planning efforts throughout its various regions. For example, Western is currently participating in WestConnect, Southwest Area Subregional Planning Transmission Group, Colorado Long-Range Transmission Planning Group, California Transmission Planning Group, Sierra Subregional Planning Group, and Mid-Continent Area Power Pool. These groups either did not exist or were in their infancies when the transmission planning principles, set forth in the Final Principles of IRP, were completed. In the ensuing 15 years, these planning entities have emerged to provide stakeholders the opportunity to become involved in regional integrated transmission planning, including projects that would result in increasing Western's transmission capacity.

Moreover, as of December 2009, Western's OATT incorporated a detailed transmission planning process based upon three core objectives: (1) Maintaining reliable electric service, (2) improving the efficiency of electric system operations, including the provision of open and non-discriminatory access to its transmission facilities, and (3) identifying and promoting new investments in transmission infrastructure in a coordinated, open and transparent, and participatory manner. The transmission planning process that is now a part of Western's OATT aids timely, coordinated, and transparent information sharing that fosters the development of electric infrastructure, maintains reliability, and meets network load growth. The process includes open planning meetings that allow anyone, including but not limited to, network and point-to-point transmission customers, interconnected neighbors, sponsors of transmission, generation and demand-side management developers, and other stakeholders to participate in all stages of development of Western's transmission plan.

Lastly, Western engages in annual 5- or 10-year transmission planning activities and, in some regions, joint planning activities with its customers. These efforts are meant to identify and prioritize long-term transmission system additions, betterments, and replacements to meet customers' needs and to ensure the reliability of the bulk electric system.

Scope: The proposed revised Final Principles of IRP will apply specifically to resource acquisitions involving a commitment to make recurring purchases over a period longer than 5 years. Final Principles of IRP do not apply to purchases made for 5 years or less and the Lease of Power Privilege under Reclamation Law (Town Sites and Power Development Act of 1906 (43 U.S.C. 522) and Reclamation Project Act of 1939 (43 U.S.C. 485h(c)). Western does not propose to change these approaches through this proposal. Western is proposing to define further the criteria and procedures used in acquiring resources for terms of longer than 5 years under the Final Principles of IRP as outlined in Resource Acquisition Principles 2 and 3. Western is not proposing any changes to Resource Acquisition Principles 1, 4, 5, and 6. Western is also proposing to eliminate the transmission planning principles set forth in the Final Principles of IRP.

Request for Public Comment

(A.) Western Is Requesting Public Comment on the Following Proposed Procedures and Evaluation Criteria for Long-Term Resource Acquisition Which, if Adopted, Would Be Included in a Revision to the Existing Final Principles of IRP

1. The Western office responsible for marketing power from a specific project will identify the need for a long-term resource acquisition. The need could be due to occurrences such as, but not limited to, the unavailability of generation from Federal hydropower facilities initially included in an existing marketing plan, generation lost due to drought conditions impacting water availability, and modifications in normal reservoir operations.

2. Once the resource need is identified and the initial amount(s) are determined, the project-specific customers involved will be notified and offered an opportunity to discuss this planned acquisition. Western will pursue widespread publication for the resource acquisition solicitation, which may include posting on Web sites, publishing in the **Federal Register** or in newsletters, or using other media to reach potential suppliers.

3. The solicitation will request potential suppliers to submit proposals that address the evaluation criteria described below, to the extent such criteria apply.

4. To the extent applicable, Western will screen the proposals received that best meet the criteria set forth below.

5. When evaluating potential resource acquisitions under the Final Principles of IRP, the following evaluation criteria will be considered:

a. Cost—the amount paid to acquire resources, such as purchased power, fuel, plant and equipment, or labor services.

b. Dependability—a supplier's ability to provide power as specified in a purchase power solicitation. A supplier is considered dependable when it delivers to the contracted location, in the contracted amount, at the contracted time, and in the contracted manner.

c. Dispatchability—the ability of a utility to schedule and control, directly or indirectly, manually or automatically, the resources under consideration.

d. Diversity—an acceptable level of both the mix of generation resources in the region's overall blend of power provided to a customer and the mix of generation sources of the supplier.

e. Environmental impact—the degree to which the resource has an impact on the human environment. Impacts vary according to: (1) The type of resource purchased (supply-side, demand-side, or renewable), (2) the length of the purchase, (3) the geographical area from which the power is purchased, and (4) the transmission path(s) used to get to the contracted location.

f. Indian Preference—Under section 2602(d) of the Energy Policy Act of 1992 (as amended by the Energy Policy Act of 2005), in purchasing any energy product or by-product, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by one or more Indian Tribes. In carrying out this subsection, a Federal agency or department will not pay more than the prevailing market price for an energy product or by-product or obtain less than prevailing market terms and conditions.

g. Renewable Energy Resource—the electric energy that is generated from solar, wind, biomass, land-fill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project and is physically delivered to the grid.

h. Risk—the potential impact of market uncertainties, including a supplier's financial condition and creditworthiness. A supplier shall be required to demonstrate adequate financial and physical resources to provide capacity and energy to meet Western's requirements during the term of the contract.

i. Transmission Availability—the ability to move or transfer electric energy over an interconnected group of lines between points of supply and points of delivery to Western's system.

j. Transmission Losses—the reduction in available electricity after being transmitted over transmission lines and/or facilities from the generation source to the contracted delivery location.

(B.) Western Is Requesting Public Comment on Its Proposal To Eliminate the Transmission Planning Principles From the Existing Final Principles of IRP

Western is proposing to eliminate the existing transmission planning principles contained in the Final Principles of IRP published in the **Federal Register** on June 9, 1995 (60 FR 30533). Western will accomplish the original objectives of the transmission planning principles through use of existing planning groups and its OATT as discussed in more detail above.

PROCEDURES REQUIREMENTS

Environmental Evaluation

Western's proposal to better define evaluation criteria and procedures for resource acquisition is an administrative action covered by an existing NEPA categorical exclusion. A categorical exclusion has been prepared and executed for this process. Once project-specific actions are identified under the Final Principles of IRP and the final evaluation criteria developed through the process defined, those actions would be individually subject to the appropriate level of NEPA review. Factors affecting the level of NEPA review include whether the project-specific action would integrate a new generation resource, precipitate changes to the transmission system, or change the normal operating limits of existing generation resources.

Determination under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: June 22, 2011.

Timothy J. Meeks,

Administrator.

[FR Doc. 2011–16308 Filed 6–28–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2010–0987, FRL–9426–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Implementation of the Oil Pollution Act Facility Response Plan Requirements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 29, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPA–2010–0987, to (1) EPA, either online using *http://www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: J. Troy Swackhammer, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–1966; *fax number:* (202) 564–2625; *e-mail address: swackhammer.j-troy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 3, 2011 (76 *FR* 6130), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No EPA–HQ–OPA–2010–0987, which is available for online viewing at www.regulations.gov, or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Implementation of the Oil Pollution Act Facility Response Plan Requirements (Renewal).

ICR numbers: EPA ICR No. 1630.10, OMB Control No. 2050–0135.

ICR Status: This ICR is scheduled to expire on June 30, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: Under section 311(j)(5) of the Clean Water Act, as amended by the Oil Pollution Act of 1990 and in regulation codified at 40 CFR 112.20 and 112.21, EPA requires that owners or operators of facilities storing oil create and maintain updated Facility Response Plans (FRP) in order to identify the necessary resources to respond to an oil spill in a timely manner. If implemented effectively, the FRP will reduce the impact and severity of oil spills and may prevent spills through the identification of risks at the facility. Although the owner or operator is the primary data user, EPA also uses the data in certain situations to ensure that facilities comply with the regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere and can greatly assist local emergency preparedness planning efforts. EPA reviews all submitted FRPs and must approve FRPs for those facilities whose discharges may cause significant and substantial harm to the environment in order to ensure that facilities believed to pose the highest risk have planned for adequate resources and procedures to respond to a spill.

Burden Statement: The respondent burden for this collection is estimated to average 1 hour per response for the Partner Registration Form, 34.5 hours per response for the Partner Annual

Assessment Form, 3 hours per response for the Endorser Registration Form, and 5 hours per response for the Endorser Annual Assessment Form. This results in an estimated annual partner respondent burden of 51 hours for new partners, 48 hours for established partners, 7 hours for new endorsers, and 3 hours for established endorsers.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses, not-for-profit institutions, and State, Local, or Tribal governments.

Estimated Number of Respondents: 22,865.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 463,419.

Estimated Total Annual Cost: $19,415,628, includes $31,736 annualized capital costs.

Changes in the Estimates: There is an increase of 30,792 hours from the currently approved burden. This is due to an observed increase in the number of facilities which must create and maintain an FRP.

Dated: June 23, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–16358 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0723; FRL–9426–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Certification of Pesticide Applicators; EPA ICR No. 0155.10, OMB Control No. 2070–0029. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 29, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2010–0723, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Pesticide Public Regulatory Docket at Potomac Yard, 7502P, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Niva Kramek, Field and External Affairs Division, Office of Pesticide Programs, 7506P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–605–1193; *fax number:* 703–305–5884; *e-mail address: kramek.niva@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), and the procedures prescribed in 5 CFR 1320.12. On October 27, 2010 (75 FR 66085), EPA sought comments on this renewal ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2010–0723, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Pesticide Public Regulatory Docket, One Potomac Yard, 2777 S. Crystal Drive, Room S–4400, Arlington, VA 22202. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for this docket is 703–305–5805.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, to access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Certification of Pesticide Applicators.

ICR numbers: EPA ICR No. 0155.10, OMB Control No. 2070–0029.

ICR Status: The current OMB approval for this ICR is scheduled to expire on July 31, 2011. Under OMB regulations at 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR is for an ongoing information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the Final Rule and in the **Federal Register** when approved, are listed in 40 CFR Part 9 or by other appropriate means, such as on the related collection instrument or form, if applicable.

Abstract: Under section 11 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA administers certification programs for pesticide applicators. FIFRA allows EPA to classify a pesticide as ''restricted use'' if the pesticide meets certain toxicity or risk criteria. This ICR addresses the paperwork activities performed by various EPA-authorized agencies of States and Indian tribal governments, as well as federal agencies (collectively referred to in this document as ''authorized agencies''), and activities performed by individuals and firms in the course of training and certifying persons who apply restricted use pesticides.

Because of their potential to harm human health or the environment, restricted use pesticides may be purchased and applied only by a

certified applicator or by a person under the direct supervision of a certified applicator. A person must meet certain standards of competency to become a certified applicator; these standards are met through completion of a certification program or test. Authorized agencies administer certified applicator programs within their jurisdictions, but each agency's certification plan must be approved by EPA before it can be implemented. In areas where no agency has been authorized, EPA may administer a certification program directly, called a Federal program.

This ICR also addresses how registrants of certain pesticide products are expected to perform specific, special paperwork activities, such as training and record-keeping, in order to comply with the terms and conditions of the pesticide registration (*e.g.,* registrants of anthrax-related pesticide products that assert claims to inactivate *Bacillus anthracis* (anthrax) spores). Paperwork activities associated with the use of such products are conveyed specifically as a condition of the registration.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range from 0.17 hours (ten minutes) to 77.35 hours per response, with a burden on most respondents of 3.1 hours. Burden is defined in 5 CFR 1320.3(b). The following is a summary of the burden and cost information for this ICR:

Respondents/Affected Entities: As identified by their North American Industrial Classification System (NAICS) code, entities potentially affected by this ICR are: Applicators on Farms (111 Crop Production, 112 Animal Production); Commercial Services Applicators (561710 Exterminating and Pest Control Services); Administration of Certification Programs by States/Tribal Lead Agencies (924110 Environmental protection program administration and 926140 Pest control programs, agricultural, governmental); Pesticide Dealers (only for EPA-administered programs) (444220 Retail Nursery, Lawn, and Garden Supply stores, 424910 Agricultural chemicals merchant wholesalers); and Pesticide and Other Agricultural Chemical Manufacturing (32532 Individuals or entities engaged in activities related to the registration of a pesticide product).

Estimated Total Number of Respondents: 427,133.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 1,320,669 hours.

Estimated Total Annual Cost: $42,134,484.

Changes in the Estimates: There is an increase of 10,918 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects a program change: the expansion of the Federal certified applicator program from Navajo Country to all of Indian Country. Burden hours per respondent have not changed.

Dated: June 23, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–16375 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2011–0096; FRL–9426–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Cross-Media Electronic Reporting Rule (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 29, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2011–0096, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei-docket@epa.gov,* or by mail to EPA Docket Center, Environmental Protection Agency, Office of Environmental Information (OEI) Docket, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, Information Exchange and Services Division, Office of Environmental Information (Mailcode 2823T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–1697; *fax number:* 202–566–1685; *e-mail address: huffer.evi@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 2, 2011 (76 *FR* 5802), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2011–0096, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Cross-Media Electronic Reporting Rule.

ICR Numbers: EPA ICR No. 2002.05, OMB Control No. 2025–0003.

ICR Status: This ICR is scheduled to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after

appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: The scope of this ICR is the electronic reporting components of the Cross-Media Electronic Reporting Rule (CROMERR), which is designed to: allow EPA to comply with the Government Paperwork Elimination Act of 1998; provide a uniform, technology-neutral framework for electronic reporting across all EPA programs; allow EPA programs to offer electronic reporting as they become ready for CROMERR; and provide states with a streamlined process—together with uniform set of standards—for approval of their electronic reporting provisions for all their EPA-authorized programs. Use of electronic reporting is voluntary. In order to accommodate CBI, the information collected must be in accordance with the confidentiality regulations set forth in 40 CFR Part 2, subpart B. Additionally, EPA will ensure that the information collection procedures comply with the Privacy Act of 1974 and the OMB Circular 108.

Burden Statement: The overall recordkeeping and reporting burden for this ICR is estimated to be about 12 minutes per response. However, the actual burden varies between 5 minutes and 331 hours depending on the specific activity. Please see the supporting statement for the details.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities reporting electronically to EPA and state, tribal, or local government authorized programs; and state, tribal, and local government authorized programs implementing electronic reporting.

Estimated Number of Respondents: EPA estimates that, on average, 87,080 facility employees will register and comply with identity proofing requirements of EPA or state, tribal, or local government authorized program electronic document receiving systems each year. EPA estimates that 24 state, tribal, or local government authorized programs will submit documentation to EPA associated with the approval of their electronic document receiving systems each year.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 39,763 hours.

Estimated Total Annual Cost: The estimated total annual cost is $2,167,446. This includes an estimated labor cost of $1,396,120, capital cost of $632,137, and operation and maintenance (O&M) cost of $139,189.

Changes in the Estimates: There is a decrease of 38,272 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease occurred for two primary reasons. First, there was a decrease in the annualized number of respondents. The total number of employees registering with EPA's electronic document receiving system and/or complying with CROMERR's identity proofing requirements decreased from 93,325 in the currently approved ICR to 87,080 in this ICR. In addition, the total number of state, tribal, and local government authorized programs upgrading their existing electronic document receiving systems or developing new electronic document receiving systems, and submitting documentation associated with the approval of CROMERR applications decreased from 61 in the currently approved ICR to 24 in this ICR. EPA conducted a thorough examination of available information (*e.g.,* number of application received over the past three years) in estimating the number of respondents subject to the requirements of this ICR. EPA thinks that the number of respondents included in this ICR is a reasonable approximation of the actual respondent universe.

Second, in developing this ICR, EPA carefully reviewed the respondent activities associated with compliance with identify proofing requirements. EPA made a few changes to the assumptions associated with subscriber agreement and LRA alternatives to be consistent with actual compliance of respondents with these requirements. For example, EPA reduced the proportion of respondents that use the LRA alternative while increasing the proportion of respondents that comply with subscriber agreement requirements. This resulted in a burden decrease because the burden associated with subscriber agreements is less than the LRA burden. EPA notes that few, if any, respondents opted to use the LRA alternative over the past three years.

Dated: June 23, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–16372 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1138; FRL–9425–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements for Importation of Nonroad Engines and Recreational Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on December 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 29, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1138, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: pugliese.holly@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket Center, (EPA/DC), EPA, West Room 3334, 1301 Constitution Ave., NW., Washington, DC. 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–2007–1138. 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 FURTHER INFORMATION CONTACT: Holly Pugliese, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; *telephone number:* 734–214–4288; *fax number:* 734–214–4869; *e-mail address: pugliees.holly@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–1138, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are importers into the United States of nonroad engines and vehicles.

Title: Reporting and Recordkeeping Requirements for Importation of Nonroad Engines and Recreational Vehicles (Renewal).

ICR numbers: EPA ICR No. 1723.05, OMB Control No. 2060–0320.

ICR status: This ICR is currently scheduled to expire on December 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the Federal Register when approved, are listed in 40 CFR part 9, are displayed either by publication in the Federal Register or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers the burden associated with EPA Form 3520–21, a declaration form for importers of nonroad vehicles or engines into the United States, which identifies the regulated category of engine or vehicle and the regulatory provisions under which the importation is taking place. In addition, this ICR covers the possible burden of EPA Form 3520–8 if it comes to be used to request final importation clearance for Independent Commercial Importers of nonroad Compression Ignition engines, who would have to bring the engines into compliance and provide test results, comparable to the use of Form 3520–8 for on-road vehicles and engines as covered by OMB 2060–0095. The information is used by Agency enforcement personnel to verify that all nonroad vehicles and engines subject to Federal emission requirements have been declared upon entry or that the category of exclusion or exemption from emissions requirements has been identified in the declaration. The information is also used to identify and prosecute violators of the regulations and to monitor the

program in achieving the objectives of the regulations. The Forms are required before making customs entry; see 19 CFR 12.73 and 12.74.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.81 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 4,801.

Frequency of response: Once per entry. (One form per shipment may be used).

Estimated total average number of responses for each respondent: 2.5.

Estimated total annual burden hours: 6,029.

Estimated total annual costs: $299,481. This includes an estimated burden cost of $261,479 and an estimated cost of $38,002 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There are no changes in the number of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. Form 3520–21 has remained relatively unchanged since the previous renewal and therefore the burden for filling in the form remains unchanged.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another Federal Register notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 22, 2011.

Karl J. Simon,

Director, Compliance and Innovative Strategies Division.

[FR Doc. 2011–16356 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9427–1]

California State Nonroad Engine Pollution Control Standards; Commercial Harbor Craft Regulations; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations for the control of emissions of particulate matter and oxides of nitrogen from new and in-use diesel-fueled engines on commercial harbor craft. CARB has requested that EPA issue a new authorization under section 209(e) of the Clean Air Act for the emission standards established by these regulations. This notice announces that EPA has tentatively scheduled a public hearing to consider California's authorization request, and that EPA is now accepting written comments on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request for July 21, 2011, at 1 p.m. EST. EPA will hold a hearing only if any party notifies EPA by July 15, 2011, expressing its interest in presenting oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to Kristien Knapp at the e-mail address noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L Street, NW., Washington, DC 20005. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and will instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until August 22, 2011.

By July 20, 2011, any person who plans to attend the hearing may call Tayyaba Waqar at (202) 343–9182, to learn if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0549, 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–2011–0549, U.S. 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.

On-Line Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0549. EPA's policy is that all comments we receive 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* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will automatically be 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.*

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2011–0549. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* website, enter EPA–HQ–OAR–2010–0549, in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver requests. Included on that page are links to prior waiver and authorization **Federal Register** notices; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Kristien G. Knapp, Attorney-Advisor, 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:* (202) 343–9949. *Fax:* (202) 343–2804. *E-mail: knapp.kristien@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. California's Commercial Harbor Craft Regulations

In a letter dated April 12, 2010, CARB submitted to EPA its request pursuant to section 209(e) of the Clean Air Act (''CAA'' or ''the Act''), regarding its regulations to enforce emission standards for new and in-use commercial harbor craft operated within California waters and twenty-four nautical miles of the California baseline (''commercial harbor craft regulations'' or ''CHC regulations'').[1] The CARB Board approved the commercial harbor craft regulations at its November 15, 2007 hearing (by Resolution 07–47).[2] After making modifications, as directed by the Board, CARB's Executive Officer formally adopted the rulemaking in Executive Order R–08–007 on September 2, 2008.[3] CARB's commercial harbor craft regulations became operative under California state law on November 19, 2008.[4] The regulations are codified in title 13, California Code of Regulations (CCR), section 2229.5 and title 17, CCR section 93118.5.[5] California's commercial harbor craft regulations establish emission standards; requirements related to the control of emissions; and enforcement provisions. The requirements are applicable to diesel propulsion and auxiliary engines on new and in-use commercial harbor crafts, with some exceptions.[6] Commercial harbor craft include a variety of different types of vessels, including ferries, excursion vessels, tugboats, towboats, and commercial and charter fishing boats. Approximately eighty percent of commercial harbor craft engines operating in California are previously unregulated diesel engines, accounting for approximately 3.3 tons per day (tpd) of diesel particulate matter (PM) and 73 tpd of oxides of nitrogen (NO_X). California's commercial harbor craft regulations aim to reduce these emissions so that California can meet the 2014 National Ambient Air Quality Standards (NAAQS) deadline for $PM_{2.5}$ in the South Coast Air Basin. The commercial harbor craft regulations apply separately to new and in-use engines used on harbor craft.[7]

For new harbor crafts, each propulsion and auxiliary diesel engine on the vessel is required to be certified to the most stringent federal new marine engine emissions standards for that engine's power rating and displacement in effect at the time of sale, lease, rent, or acquisition. The regulation imposes additional requirements for larger new ferries (with the capacity to transport seventy-five or more passengers), either by using best available control technology (''BACT''),[8] or by using a federal Tier 4 certified propulsion engine.

For in-use harbor craft, newly acquired new or in-use harbor craft may not be sold, offered for sale, leased, rented, or acquired unless the diesel propulsion or auxiliary engines are certified to at least the federal Tier 2 or Tier 3 marine emission standards for new engines of the same power rating and displacement. In-use emission requirements are imposed on Tier 0 and Tier 1 marine engines in ferries, excursion vessels, tugboats, towboats, push boats, and multipurpose harbor craft. Those harbor crafts are required to meet emission limits equal to or cleaner than the federal new marine engine certification standards in effect for the year that in-use engine compliance is required.

California's commercial harbor craft regulations also impose requirements related to monitoring, reporting and recordkeeping of compliance on owners and operators of new and in-use harbor craft. Subject to CARB approval, harbor craft owners and operators may opt to meet requirements by implementing alternative emission control strategies.[9]

II. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from

[1] Letter from James Goldstene to Lisa P. Jackson, EPA–HQ–OAR–2011–0549–0001.

[2] CARB Attachment 10, Resolution 07–47, EPA–HQ–OAR–2011–0549–0027.

[3] CARB Attachment 11, Executive Order R–08–007, EPA–HQ–OAR–2011–0549–0030.

[4] *See* CARB Attachment 16, California Office of Administrative Law, Approval Notice, EPA–HQ–OAR–2011–0549–0035.

[5] *See* CARB Attachment 15, California Office of Administrative Law, Final Regulation Order, EPA–HQ–OAR–2011–0549–0034.

[6] *See* CARB, Authorization Support Document, p. 5, EPA–HQ–OAR–2011–0549–0002.

[7] CARB, Authorization Support Document, EPA–HQ–OAR–2011–0549–0002.

[8] BACT is the diesel emission control strategy (DECS) determined by CARB to be the greatest feasible reduction of NO_X or PM when used with the ferry's propulsion engines and does not result in an increase of ten percent or more of any air pollutant including NO_X or PM, relative to the engine's emission of that air pollutant without the use of BACT and use of DECS on or with engine does not invalidate or otherwise adversely affect the propulsion engine's original warranty.

[9] Alternative emission control strategies can include engine modification, exhaust after-treatment control, engine repower, use of alternative fuels or fuel additives, or fleet averaging. *See* CARB, Authorization Support Document, EPA–HQ–OAR–2011–0549–0002.

adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to the control of emissions from new engines not listed under section 209(e)(1), if certain criteria are met. EPA has promulgated regulations implementing these provisions at 40 CFR part 1074. These regulations set forth the criteria that EPA must consider before granting California authorization to enforce its new nonroad emission standards.[10] As stated in the preamble to the section 209(e) rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[11]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

[10] Title 40 of the Code of Federal Regulations, part 1074.105 provides:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[11] *See* 59 FR 36969 (July 20, 1994).

III. EPA's Request for Comments

As stated above, EPA is offering the opportunity for a public hearing, and requesting written comment on issues relevant to a full section 209(e) authorization analysis. Specifically, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

IV. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until August 22, 2011. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2011–0549.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as ''Confidential Business Information'' (''CBI''). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: June 24, 2011.

Margo T. Oge,

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

[FR Doc. 2011–16398 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9426–9]

California State Nonroad Engine Pollution Control Standards; Ocean-Going Vessels At-Berth in California Ports; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted airborne toxic control measures for auxiliary diesel engines operated on ocean-going vessels at-berth in California ports (''At-Berth Regulation''). The At-Berth Regulation is designed to reduce emissions of oxides of nitrogen and particulate matter from auxiliary diesel engines on container vessels, passenger vessels and refrigerated cargo vessels while they are docked at specified California ports. CARB has requested that EPA grant a new full authorization pursuant to Clean Air Act section 209(e) for this regulation. This notice announces that EPA has tentatively scheduled a public hearing to consider California's At-Berth Regulation, and that EPA is now accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on July 21, 2011, at 10 a.m. EST. EPA will hold a hearing only if any party notifies EPA by July 15, 2011, expressing its interest in presenting oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to Kristien Knapp at the e-mail address

noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L Street, NW., Washington, DC 20005. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until August 22, 2011.

By July 20, 2011, any person who plans to attend the hearing may call Ryan G. Rudich at (202) 343–9188, to learn if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0548, 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–2011–0548, U.S. 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.

On-Line Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0548. EPA's policy is that all comments we receive 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 automatically be 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.*

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2011–0548. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA–HQ–OAR–2011–0548, in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver requests. Included on that page are links to prior waiver and authorization **Federal Register** notices; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Kristien G. Knapp, Attorney-Advisor, 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:* (202) 343–9949. *Fax:* (202) 343–2804. *E-mail: knapp.kristien@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. California's At-Berth Regulation

By letter dated August 2, 2010, CARB submitted to EPA its request pursuant to section 209(e) of the Clean Air Act (''CAA'' or ''the Act''), regarding its regulations to enforce its airborne toxic control measures (ATCM) for auxiliary diesel engines operated on ocean-going vessels at-berth in California ports (''At-Berth Regulation'').[1] The At-Berth Regulation is designed to significantly reduce emissions of diesel particulate matter (PM), which is a CARB-identified toxic air contaminant, oxides of nitrogen (NO_X), and carbon dioxide (CO_2), a greenhouse gas. These reductions will assist California in meeting federal and state ambient air quality standards for the South Coast and San Joaquin Valley air basins for ozone and fine particulate matter ($PM_{2.5}$). CARB approved the At-Berth Regulation at a public hearing on December 6, 2007 (by Resolution 07–57).[2] After making modifications to the regulation available on August 22, 2008 for supplemental public comment, CARB's Executive Officer formally adopted the At-Berth Regulation in Executive Order R–08–013 on October 16, 2008.[3] The At-Berth Regulation is codified in title 13, California Code of Regulations, section 2299.3, and title 17, California Code of Regulations, section 93118.3.[4]

CARB's At-Berth Regulation contains requirements that apply, with limited exceptions,[5] to any person who owns,

[1] California Air Resources Board (''CARB''), ''Request for Authorization,'' August 2, 2010, EPA–HQ–OAR–2011–0548–0001.

[2] CARB Attachment #4, ''Resolution 07–57,'' EPA–HQ–OAR–2011–0548–0006.

[3] CARB Attachment #6, ''Executive Order R–08–013,'' EPA–HQ–OAR–2011–0548–0008.

[4] CARB Attachment #8, ''Final Regulation Order for title 13, CCR section 2299.3,'' EPA–HQ–OAR–2011–0548–0010; CARB Attachment #9, ''Final Regulation Order for title 17, CCR section 93118.3,'' EPA–HQ–OAR–2011–0548–0011.

[5] The following vessels are exempt from the At-Berth Regulation: ocean going vessel voyages consisting of continuous and expeditious navigation (*i.e.,* traversing Regulated California Waters without entering California internal estuarine waters or calling at a port); vessels owned

operates, charters, rents or leases any container vessel, passenger vessel, or refrigerated cargo vessel that visits any of six specified California ports.[6] It also contains requirements that affect any person who owns or operates those ports or terminals located at them.

The At-Berth Regulation requires fleets of container vessels, passenger vessels and refrigerated cargo vessels to either: (1) Limit the amount of time they operate their auxiliary diesel engines by connecting to shore power for most of a vessel's stay at port (''Shore Power Option''); or (2) achieve equivalent emission reductions by employing other emission control techniques (''Equivalent Emission Reduction Option'').[7] Fleet operators that elect the Shore Power Option are required to obtain the power that would otherwise be provided by a vessel's auxiliary engines by connecting to shore power for a percentage of the fleet's annual port visits.[8] The required percentage of shore power connected port visits increases over the life of the regulation. Specifically, fifty percent of a fleet's total visits must be connected to shore power by 2014, followed by seventy percent by 2017, and eighty percent by 2020. Additionally, if a vessel is equipped to connect to shore power and it visits a berth equipped to provide compatible power, the vessel must use the shore power provided.

Fleet operators that elect the Equivalent Emission Reduction Option must reduce their fleet's auxiliary engine emissions by specific amounts below the fleet's baseline emissions by specific dates.[9] This option requires that a fleet achieve a ten percent reduction from the fleet's baseline emissions by 2010, a twenty-five percent reduction by 2012, a fifty percent reduction by 2014, a seventy percent reduction by 2017, and an eighty percent reduction by 2020. Emission reductions can be achieved by: (1) Using grid-based shore power; (2) using distributed generation equipment to provide power to the vessel; (3) using alternative emission controls onboard a vessel or at the berth; or (4) using a combination of these techniques. Fleets that achieve reductions of emissions of oxides of nitrogen or particulate matter in excess of the prescribed reductions receive fleet emission credits that can be used to comply with emission reduction requirements in subsequent years.

The At-Berth Regulation also requires operators of terminals that received more than fifty vessel visits in 2008 to submit terminal plans identifying how the terminals would be upgraded to accommodate vessels under the two compliance options and including a schedule for implementing the needed infrastructure improvements. They are required to submit plan updates at a frequency dependent upon the compliance option selected by the vessel fleet owner or operator and the terminals.

II. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to the control of emissions from new engines not listed under section 209(e)(1), if certain criteria are met. EPA has promulgated regulations implementing these provisions at 40 CFR part 1074. These regulations set forth the criteria that EPA must consider before granting California authorization to enforce its new nonroad emission standards.[10]

As stated in the preamble to the section 209(e) rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[11]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

III. EPA's Request for Comments

As stated above, EPA is offering the opportunity for a public hearing, and requesting written comment on issues

or operated by local, state, federal, or foreign governments in government non-commercial services; steamships; auxiliary engines using natural gas; and fleets composed solely of container or refrigerated cargo vessels making fewer than twenty-five (25) visits to the same California port in a Calendar year or fleets composed solely of passenger vessels making fewer than five (5) visits to the same California port in a calendar year. Exemptions also exist for emergency events and hotelling required by a federal agency. Title 17, California Code of Regulations (CCR), section 93118.3(b)(3), CARB Attachment #9, ''Final Regulation Order for title 17, CCR section 93118.3,'' EPA–HQ–OAR–2011–0548–0011.

[6] The At-Berth Regulation applies to vessels docked at six California ports: the Port of Hueneme, the Port of Los Angeles, the Port of Long Beach, the Port of Oakland, the Port of San Diego, and the Port of San Francisco.

[7] ''Fleet'' means ''all container, passenger, and refrigerated cargo vessels, visiting a specific California port, which are owned and operated by, or otherwise under the direct control, of the same Person * * * For purposes of this section, a person shall be deemed to have separate fleets for each California port visited and each fleet is composed of one type of vessel.'' Title 17, CCR section 93118.3(c)(16). *See also* CARB, ''Authorization Support Document,'' EPA–HQ–OAR–2011–0548–0002.

[8] ''Shore power'' is defined as ''electrical power being provided by either the local utility or by distributed generation.'' CARB Attachment 9, ''Final Regulation Order for title 17, CCR section 93118.3,'' EPA–HQ–OAR–2011–0548–0011.

[9] CARB, ''Authorization Support Document,'' August 2, 2010, EPA–HQ–OAR–2011–0548–0002.

[10] Title 40 of the Code of Federal Regulations, part 1074.105 provides:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[11] *See* 59 FR 36969 (July 20, 1994).

relevant to a full authorization analysis. Specifically, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

IV. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until August 22, 2011. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2011–0548.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as ''Confidential Business Information'' (''CBI''). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: June 24, 2011.

Margo Tsirigotis Oge,

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

[FR Doc. 2011–16395 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9425–8]

Meeting of the National Drinking Water Advisory Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given of a meeting of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will consider various issues associated with drinking water protection and public water systems including nutrient pollution and impacts to drinking water supplies. The Council will also receive updates about several on-going drinking water program activities including rulemakings related to the Total Coliform Rule and the Lead and Copper Rule.

DATES: The Council meeting will be held on July 21, 2011, from 8:30 a.m. to 5 p.m., and July 22, 2010, from 8:30 a.m. to 2 p.m., Pacific Time.

ADDRESSES: The meeting will be held at the U.S. Environmental Protection Agency Region 9 Office, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to attend the meeting, present an oral statement, or submit a written statement, should contact Suzanne Kelly, by e-mail, *Kelly.Suzanne@epa.gov,* by phone, 202–564–3887, or by regular mail at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Council encourages the public's input and will allocate one hour (3:30 p.m.–4:30 p.m.) on July 21, 2011, for this purpose. Oral statements will be limited to five minutes. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Suzanne Kelly by telephone at 202–564–3887 no later than July 14, 2011. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received by July 11, 2011 will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received July 12, 2011, or after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information. Members of the public will have to show photo identification to enter the building. Attendees are encouraged to arrive at least 15 minutes prior to the start of the meeting to allow sufficient time for security screening.

Special Accommodations

For information on access or services for individuals with disabilities, please contact Suzanne Kelly at 202–564–3887 or by e-mail at *Kelly.Suzanne@epa.gov.* To request accommodation of a disability, please contact Suzanne Kelly, preferably, at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: June 23, 2011.

Ronald W. Bergman,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2011–16380 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0082; FRL–8871–1]

Withdrawal of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of pesticide petitions.

SUMMARY: This document announces the withdrawal of several pesticide petitions requesting the establishment or modification of regulations. The petitions were withdrawn voluntarily and without prejudice to future filing.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Although this action only applies to the petitioners in question, it is directed

to the public in general. Since various individuals or entities may be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, please consult the person listed at the end of the withdrawal summary for the pesticide petition of interest.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0082. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the agency taking?

EPA is announcing the withdrawal of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR Part 174 or Part 180 for residues of pesticide chemicals in or on various food commodities.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions covered by this document, prepared by the petitioner, was included in a docket EPA created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

Withdrawals by Petitioners

1. *PP 0E7769 (Kerosene, fuel oil #1).* EPA issued a notice in the **Federal Register** of October 22, 2010 (75 FR 65321) (FRL–8851–1) (EPA–HQ–OPP–2010–0803), which announced the filing of a pesticide petition (PP 0E7769) by Lighthouse Product Services, on behalf of Winfield Solutions LLC., 3937 Cedarwood Lane, Johnstown, Colorado 80534. The petition proposed to amend the tolerance in 40 CFR 180.920 for residues of kerosene, fuel oil #1 (CAS Reg. No. 8008–20–6 or 64742–81–0), when used as an inert ingredient in pesticide formulations. On January 11, 2011, Lighthouse Product Services, on behalf of Winfield Solutions LLC., notified EPA that it was withdrawing this petition. Contact: Elizabeth Fertich, (703) 347–8560, *e-mail address: fertich.elizabeth@epa.gov.*

2. *PP 0E7786 (D(+)-Lactide-L-(-)-lactide-meso-lactide polymer).* EPA issued a notice in the **Federal Register** of October 22, 2010 (75 FR 65321) (FRL–8851–1) (EPA–HQ–OPP–2010–0837), which announced the filing of a pesticide petition (PP 0E7786) by NOD Apiary Products USA Inc., 8345 NW., 66th St., 8418, Miami, FL 33166. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of D(+)-lactide-L-(-)-lactide-meso-lactide polymer (CAS Reg. No. 9051–89–2) when used as an inert ingredient (component of controlled release agent) in miticide formulations applied to honeybee hives. On January 21, 2011, NOD Apiary Products, notified EPA that it was withdrawing this petition. Contact: Kerry Leifer, (703) 308–8811, *e-mail address: leifer.kerry@epa.gov.*

3. *PP 2E6426 and PP 9E7625 (Linuron).* EPA issued a notice in the **Federal Register** of January 6, 2010 (75 FR 864) (FRL–8801–5) (EPA–HQ–OPP–2009–0843), which announced the filing of pesticide petitions (PP 2E6426 and PP 9E7625) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petitions proposed to amend the tolerances in 40 CFR 180.184 by establishing tolerances for residues of linuron, (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on the raw agricultural commodities: Pea, dry at 0.07 parts per million (ppm); parsley, leaves at 2.5 ppm; and parsley, dried leaves at 7.0 ppm (PP 9E7625); and horseradish at 0.050 ppm (PP 2E6426). On February 1, 2011, Interregional Research Project Number 4 (IR–4), notified EPA that it was withdrawing these petitions. Contact: Laura Nollen, (703) 305–7390, *e-mail address: nollen.laura@epa.gov.*

4. *PP 3E6536 (Mancozeb).* EPA issued a notice in the **Federal Register** of November 30, 2005 (70 FR 71838) (FRL 7747–5) (EPA–HQ–OPP–2005–0307) which announced the filing of a pesticide petition (PP 3E6536) by Dow AgroSciences LLC., 9330 Zionsville Road, Indianapolis, IN 46268. The petition proposed to amend the tolerances in 40 CFR 180.176 by establishing an import tolerance for the combined residues of the fungicide mancozeb in or on the imported food commodities mandarin oranges/mandarins at 5.0 parts per million (ppm). On December 21, 2010, Dow AgroSciences LLC., notified EPA that it was withdrawing the petition. Contact: Lisa Jones, (703) 308–9424, *e-mail address: jones.lisa@epa.gov.*

5. *PP 6E4728 and PP 9E6010 (Agsolex 8 and Agsolex 12).* EPA issued a Notice of Filing in the **Federal Register** on August 30, 2000 (65 FR 52735) (FRL–6595–5), (EPA–HQ–OPP–2011–0060, formerly Docket ID #PF–956), which announced the filing of a pesticide petition (PP 6E4728) by International Specialty Products, 1361 Alps Road, Wayne, NJ 07470. The petition proposed to amend 40 CFR 180.1001(c) and (e) for residues of N-(n-octyl)-2-pyrrolidone (Agsolex 8) (CAS Reg No. 2687–94–7) and N-(n-dodecyl)-2-pyrrolidone (Agsolex 12) (CAS Reg. No. 2687–96–9) when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities, or to animals. EPA also issued a Notice of Filing on September 2, 1999 (64 FR 48165) (FRL–6094–5) (EPA–HQ–OPP–2011–0060, formerly Docket ID #PF–883), which announced the filing of a pesticide petition (PP 9E6010) by International Specialty Products, 1361 Alps Road, Wayne, NJ 07470. The petition proposed to amend 40 CFR Part 180 for residues of N-(n-octyl)-2-pyrrolidone (Agsolex 8) (CAS Reg. No. 2687–94–7) in or on the raw agricultural commodities (RACs): Soybeans, soybean forage, soybean fodder, and soybean hay when used as an inert ingredient (solvent) in seed treatment applied at a maximum rate of 3 grams/acre. On February 4, 2011, International Specialty Products, notified EPA that it was withdrawing both petitions (PP 6E4728 and PP 9E6010). Contact: Mark Dow (703) 305–5533, *e-mail address: dow.mark@epa.gov.*

6. *PP 9E7611 (Chlorothalonil).* EPA issued a notice in the **Federal Register** of January 6, 2010 (75 FR 864) (FRL–8801–5) (EPA–HQ–OPP–2009–0774), which announced the filing of a pesticide petition (PP 9E7611) by Interregional Research Project Number #4 (IR–4), IR–4 Project Headquarters, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition proposed to amend the tolerances in 40 CFR 180.275 by establishing a tolerance for residues of chlorothalonil in or on berry, low growing subgroup 13–07G at 0.01 ppm; bushberry subgroup 13–07B at 1 ppm; onion, bulb subgroup 3–07A at 0.5 ppm; and onion, green subgroup 3–07B at 5 ppm. On December 1, 2010, IR–4, notified EPA that it was withdrawing this petition. Contact: Sidney Jackson, (703) 305–7610, *e-mail address: jackson.sidney@epa.gov.*

7. *PP 9E7638 (Alkyl polyglycosides).* EPA issued a notice in the **Federal Register** of February 4, 2010 (75 FR

5790) (FRL–8807–5) (EPA–HQ–OPP–2009–0937), which announced the filing of a pesticide petition (PP 9E7638) by Cognis Corporation, c/o Lewis & Harrison, LLC., 122 C. St., NW., Suite 740, Washington, DC 20001. The petition proposed to establish an exemption from the requirement of a tolerance for residues of the alkyl polyglycosides (CAS Reg. Nos. 68515–73–1, 110615–47–9, and 132778–08–6) under 40 CFR 180.950 when used as inert ingredient in pesticide formulations. On September 8, 2010, Lewis & Harrison, LLC., notified EPA that it was withdrawing this petition. Contact: Karen Samek, (703) 347–8825, *e-mail address: samek.karen@epa.gov.*

8. *PP 0F7739 (Diflubenzuron).* EPA issued a notice in the **Federal Register** of August 11, 2010 (75 FR 48667) (FRL–8840–6) (EPA–HQ–OPP–2010–0603), which announced the filing of a pesticide petition (PP 0F7739) by Chemtura Corporation, 199 Benson Road (2–5), Middlebury, CT 06749. The petition proposes to establish tolerances in 40 CFR part 180 for residues of the insecticide diflubenzuron, N-[[(4-chlorophenyl) amino]carbonyl]-2,6-difluorobenzamide (DFB) and its metabolites 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA), in or on citrus fruit, crop group 10 at 1.3 ppm, and citrus, oil processed commodity at 39 ppm. On August 12, 2010, Chemtura Corp., notified EPA that it was withdrawing the petition for citrus fruit, crop group 10, only. Contact: Kable Davis, (703) 306–0415, *e-mail address: davis.kable@epa.gov.*

9. *PP 8F7349 (Methomyl).* EPA issued a notice in the **Federal Register** of August 13, 2008 (73 FR 47184) (FRL–8376–8), (EPA–HQ–OPP–2007–0975), which announced the filing of a pesticide petition (PP 8F7349) by DuPont de Nemours and Company, DuPont Crop Protection, P.O. Box 30, Newark, DE 19714–0030. The petition proposes to set reduced tolerances in 40 CFR Part 180 for residues of the insecticide, methomyl (S-methyl N-[(methylcarbamoyl)oxy] thioacetimidate), in or on grapes, table at 1.5 ppm; grapes, juice at 5.0 ppm; grapes, raisin at 5.0 ppm; and grapes, wine at 5.0 ppm. On February 9, 2010, DuPont, notified EPA that it was withdrawing the petition for decreasing the tolerance on grapes. Contact: Tom Harris, (703) 308–9423, *e-mail address: harris.thomas@epa.gov.*

10. *PP 9F7622 (Metconazole).* EPA issued a notice in the **Federal Register** of June 23, 2010 (75 FR 35801) (FRL–8831–3), (EPA–HQ–OPP–2010–0287), which announced the filing of a pesticide petition (PP 9F7622) by Valent U.S.A. Company, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596–8025. The petition proposed to amend the tolerances in 40 CFR 180.617 by decreasing the established tolerance for residues of the fungicide metconazole, 5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1H–1,2,4-triazol-1-ylmethyl)cyclopentanol, measured as the sum of *cis*- and *trans*-isomers, in or on nut, tree (crop group 14) from 0.04 ppm to 0.02 ppm. On November 30, 2010, Valent U.S.A. Company, notified EPA that it was withdrawing this petition. Contact: Tracy Keigwin, (703) 305–6605, *e-mail address: keigwin.tracy@epa.gov.*

11. *PP 7F7264 (Flusilazole).* EPA issued a notice in the **Federal Register** of April 13, 2009 (74 FR 16866) (FRL–8396–6) (EPA–HQ–OPP–2008–0838), which announced the filing of a pesticide petition (PP 7F7264) by E. I. duPont de Nemours and Company, DuPont Crop Protection, P. O. Box 30, Newark, DE 19714–0030. The petition proposed to establish a tolerance in 40 CFR Part 180 for residues of the fungicide flusilazole, (1[[bis(4-fluorophenyl)methyl-silyl]methyl]-1H–1,2,4-triazole) and its metabolite IN–F7321 (bis(4-fluorophenyl) methylsilanol) in or on soybean at 0.04 parts per million (ppm); soybean, aspirated grain fractions at 2.6 ppm; soybean, refined oil at 0.1 ppm; wheat, grain at 0.15 ppm; wheat, forage at 25 ppm, wheat, straw at 7.0 ppm; wheat, aspirated grain fractions at 6.0 ppm; cattle, fat at 1.5 ppm; cattle, kidney at 5.0 ppm; cattle, liver at 2.0 ppm; cattle, meat and cattle meat byproducts at 0.40 ppm; goat, fat at 1.5 ppm; goat, kidney at 5.0 ppm; goat, liver, at 2.0 ppm; goat, meat and goat, meat byproducts at 0.40 ppm; hog, fat at 1.5 ppm; hog, kidney at 5.0 ppm; hog, liver at 2.0 ppm; hog, meat and hog, meat byproducts at 0.40 ppm; horse, fat at 1.5 ppm; horse, kidney at 5.0 ppm; horse, liver at 2.0 ppm; horse, meat and horse, meat byproducts a 0.40 ppm; milk at 0.20 ppm; milk, fat at 1.3 ppm; sheep, fat at 1.5 ppm; sheep, kidney at 5.0 ppm; sheep, liver at 2.0 ppm; sheep, meat and sheep, meat byproducts at 0.40 ppm. On February 2, 2009, E. I. duPont de Nemours and Company, DuPont Crop Protection notified EPA that it was withdrawing this petition. Contact: Tracy Keigwin, 703–305–6605, *keigwin.tracy@epa.gov.*

12. *PP 8E7313 (Fenpropidin).* EPA issued a notice in the **Federal Register** of April 13, 2009 (74 FR 16866) (FRL–8396–6) (EPA–HQ–OPP–2008–0840), which announced the filing of a pesticide petition (PP 8E7313) by Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27419. The petition proposed to establish a tolerance in 40 CFR part 180 for residues of the fungicide fenpropidin, 1-[3-[4-(1, 1-dimethylethyl) phenyl]-2-methyl-propyl]-piperidine in or on banana, whole fruit at 10 parts per million (ppm). On October 16, 2009, Syngenta Crop Protection notified EPA that it was withdrawing this petition. Contact: Tracy Keigwin, 703–305–6605, *keigwin.tracy@epa.gov.*

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–16199 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0357, FRL–8878–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing an active ingredient not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before July 29, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0357, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket

Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2011–0357. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Gene Benbow, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–0235; e-mail address: *benbow.gene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register pesticide products containing an active ingredient not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of FIFRA, EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *File Symbol:* 59639–RIN. *Applicant:* Valent U.S.A. Corporation. 1600 Riviera Ave., Suite 200. Walnut Creek, CA 94596. *Product name:* V–10135 Technical Fungicide. *Active ingredient:* Fungicide and fenpyrazamine at 96.6%. *Proposed classification/Use:* Fungicide for formulation use only.

2. *File Symbol:* 59639–RTO. *Applicant:* Valent U.S.A. Corporation. 1600 Riviera Ave., Suite 200. Walnut Creek, CA 94596. *Product name:* V10135 4 SC Fungicide. *Active ingredient:* Fungicide and fenpyrazamine at 43.6%. *Proposed classification/Use:* For control of certain diseases in almond, grape (small fruit vine climbing group, except fuzzy kiwifruit), lettuce (head and leaf), strawberry (low growing berry subgroup) and ornamentals.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 16, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–16042 Filed 6–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9426–8]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Wayne County Department of Public Services in Wayne County, MI (Wayne County)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States of a satisfactory quality] to Wayne County for the purchase of Link-Pipe PVC products in various pipe diameters for sewer pipe repair in seventeen locations throughout the Rouge Valley Sewage Disposal System in Wayne County, Michigan. This is a project-specific waiver and only applies to the use of the specified products for the ARRA-funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. These Link-Pipe PVC products, which are manufactured in Canada, meet Wayne County's performance specifications and requirements. The Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. Wayne County has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of Link-Pipe PVC products in various pipe diameters for sewer pipe repair that may otherwise be prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew Lausted, SRF Program Manager (312) 886–0189, or Puja Lakhani, Office of Regional Counsel, (312) 353–3190, U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to Wayne County, Michigan, for the acquisition of Link-Pipe PVC in various pipe diameters that are manufactured in Canada.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The Link-Pipe PVC products will allow for efficient and effective sewer pipe repair at seventeen locations throughout the Rouge Valley Sewage Disposal System. Wayne County selected Link-Pipe products to allow for trenchless spot repair of sanitary sewer interceptor lines. The snap-out PVC repair sleeves are designed to quickly and easily repair damaged/leaking sanitary sewers without excavation—a requirement for the project since many of the sewer interceptor repair sites are located in remote wetlands and forested areas where access is restricted. Wayne County's submissions clearly articulated the functional reasons that justified their technical specifications and requirements.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009','' defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.''

The applicant met the requirements specified for the availability inquiry as appropriate to the circumstances by conducting an extensive investigation into all possible sources for products to repair sewer pipe 42 to 78 inches in diameter. Based on the investigation, several companies were found to manufacture sewer repair products, but none were able to meet all of the criteria in the project specifications, namely snap-out repair sleeves consisting of rigid polyvinylchloride pipe material conforming to material standards known as Normal Impact Type 1 PVC 12454–B, snap-out parts connected by non-corrodible metal hinges, and sleeves to repair sewer pipe between 42 to 78 inches in diameter. Therefore, Wayne County contends that there is no domestic product of satisfactory quality available.

EPA's national contractor prepared a technical assessment report based on the submitted waiver request. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, the Link-Pipe PVC snap-out sewer repair sleeves necessary for this project are not manufactured in the United States, and no other U.S. manufactured product can meet Wayne County's project performance specifications and requirements.

EPA has also evaluated Wayne County's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as ''late'' if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says ''the award official *may* deny the request.'' For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet Wayne County's project specifications for PVC repair sleeves that fit sewer pipe 42 to

78 inches in diameter. The waiver request was submitted after the contract was signed due to the large size of the project, which led to Wayne County not being made aware that there are no domestic equivalents for the PVC repair sleeves in question until after the contract was signed. There is no indication that Wayne County failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider Wayne County's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by Wayne County and no loss by the government due to the late request.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring loan recipients such as Wayne County to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay project implementation is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

EPA has reviewed this waiver request and has determined that the supporting documentation provided by Wayne County is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum'': Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this item in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet Wayne County's project performance specifications and requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, Wayne County is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of Link-Pipe PVC products in various pipe diameters using ARRA funds as specified in the community's request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: P.L. 111–5, section 1605.

Dated: February 3, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–16389 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9426–7]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Metropolitan Council Environmental Services of St. Paul, MN (MCES)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States of a satisfactory quality] to MCES of St. Paul, Minnesota, for the purchase of four combination air release/vacuum valves (ARVs) to prevent failure or blockage of the South St. Paul Forcemain (pressure pipe) located in St. Paul, Minnesota. This is a project-specific waiver and it only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. These ARVs, which are manufactured in Israel, meet MCES's performance specifications and requirements. The Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. MCES has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of four combination ARVs for the South St. Paul Forcemain project that may otherwise be prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew Lausted, SRF Program Manager (312) 886–0189, or Joseph Williams, Office of Regional Counsel, (312) 886–6631, U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to MCES of St. Paul, Minnesota, for the South St. Paul Forcemain project, for the acquisition of four combination ARVs that are manufactured in Israel.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

These manufactured goods will prevent failure or blockage of the South St. Paul Forcemain pressure pipe. MCES started using these particular ARVs seven years ago and they have become their standard air release vacuum valve. They were selected as their standard because of their light weight, ease of installation and maintenance, simplicity of operation, excellent performance, and low cost. MCES's submissions clearly articulated functional reasons that justified their technical specifications and requirements.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law

111–5, the 'American Recovery and Reinvestment Act of 2009','' defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The applicant met the requirements specified for the availability inquiry as appropriate to the circumstances by conducting an extensive investigation into all possible sources for combination ARVs. Based on the investigation, several companies were found to manufacture the required ARVs, but none were able to meet all of the criteria in the project specifications, namely a conical body shape, a spring-loaded joint between the stem and the upper float, and a 316 SAE stainless steel body. Therefore, MCES contends that there is no domestic product of satisfactory quality available.

EPA's national contractor prepared a technical assessment report based on the submitted waiver request. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, the four combination ARVs necessary for this project are not manufactured in the United States, and no other U.S. manufactured product can meet MCES's project performance specifications and requirements.

EPA has also evaluated MCES's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as ''late'' if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says ''the award official *may* deny the request.'' For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet MCES's project specifications for the purchase of four combination ARVs to prevent failure or blockage of the South St. Paul Forcemain (pressure pipe). The waiver request was submitted after the contract was signed due to the large size of the project. With the nature of large projects having numerous items in the specifications, it is difficult and time consuming to know the origin of every single item, until shop drawings are submitted or it comes time to purchase an item. Therefore, MCES was not aware that there are no domestic equivalents for the ARVs in question until after the contract was signed. There is no indication that MCES failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider MCES's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by MCES and no loss by the government due to the late request.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring loan recipients such as MCES to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay project implementation is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

EPA has reviewed this waiver request and has determined that the supporting documentation provided by MCES is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum'': Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this item in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet MCES's project performance specifications and requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, MCES is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of four combination ARVs using ARRA funds as specified in the community's request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Public Law 111–5, section 1605.

Dated: May 9, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–16386 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9426–2]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Metropolitan Council Environmental Services of St. Paul, MN (MCES)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States of a satisfactory quality] to the Metropolitan Council Environmental Services (MCES) of St. Paul, Minnesota, for the purchase of one Parkson StrainPress SC–4 pressurized in-line sludge screen to process gravity thickened primary sludge at its Blue Lake Wastewater Treatment Plant located in Shakopee, Minnesota. This is a project-specific waiver and it only applies to the use of the specified product for the ARRA funded project being proposed. Any

other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. This sludge screen, which is supplied by Parkson Corporation of Vernon Hills, Illinois, is manufactured in Germany, and meets MCES's performance specifications and requirements. The Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. MCES has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of one StrainPress SC–4 pressurized in-line sludge screen for the Blue Lake Wastewater Treatment Plant Solids Improvements project that may otherwise be prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew Lausted, SRF Program Manager, (312) 886–0189, or Puja Lakhani, Office of Regional Counsel, (312) 353–3190, U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to MCES of St. Paul, Minnesota, for the acquisition of a Parkson StrainPress SC–4 pressurized in-line sludge screen that is manufactured in Germany.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

This pressurized in-line sludge screen will remove undesirable contaminants and debris from the waste primary sludge prior to the pelletizing process. MCES selected this particular sludge screen because it already has two Parkson screens at the facility, and a third screen is needed to accommodate increased wastewater flows and loading. This screen is an exact match for the existing screens. Additionally, spare parts are in stock, and staff are trained to operate and maintain the screen. Only the Parkson StrainPress SC–4 screen is small enough to fit into the designated treatment area at the Blue Lake facility. MCES's submissions clearly articulated functional reasons that justified their technical specifications and requirements.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009','' defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.''

The applicant met the requirements specified for the availability inquiry as appropriate to the circumstances by conducting an extensive investigation into all possible sources for pressurized in-line sludge screens. Based on the investigation, three companies were found to manufacture the required sludge screens, but none were manufactured in the United States. Given the space limitations of the project and that the two existing Parkson sludge screens have operated effectively since 1999 and still have many years of useful life, MCES believes that a third screen would perform equally well in this specific application. Therefore, MCES contends that there is no domestic product of satisfactory quality available consistent with the specifications of this project.

EPA's national contractor prepared a technical assessment report based on the submitted waiver request. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that the utility's claim that no U.S. manufacturer could provide the item was supported by the available evidence. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, the Parkson StrainPress SC–4 pressurized in-line sludge screen necessary for this project is not manufactured in the United States, and no other U.S. manufactured product can meet MCES's project performance specifications and requirements.

EPA has also evaluated MCES's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as ''late'' if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says ''the award official may deny the request'' for a waiver. For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet MCES's project specification for this pressurized in-line sludge screen. The waiver request was submitted after the contract was signed due to the large size of the project, with approximately 200 sub-contracts, which led to MCES not being made aware that there are no domestic equivalents for the sludge screen until after the contract was signed. There is no indication that MCES failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider MCES's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by MCES and no loss by the government due to the late request.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring loan recipients such as MCES to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay project implementation is in direct conflict with a fundamental

economic purpose of the ARRA, which is to create or retain jobs.

EPA has reviewed this waiver request and has determined that the supporting documentation provided by MCES is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum'': Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this item in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet MCES's project performance specifications and requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, MCES is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of one Parkson StrainPress SC–4 pressurized in-line sludge screen using ARRA funds as specified in the community's request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Pub. L. 111–5, section 1605.

Dated: January 31, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–16383 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0464; FRL–8877–4]

Registration Review; Pesticide Dockets Opened for Review and Comment and Other Docket Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the Agency's intent not to open a registration review docket for cucumber beetle attractant. This pesticide does not currently have any actively registered pesticide products and is not, therefore, subject to review under the registration review program. This document also announces the availability of amended final work plans for the registration review of the pesticides isoxaben and bifenthrin; these work plans have been amended to incorporate revisions to the data requirements.

DATES: Comments must be received on or before August 29, 2011.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this

Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact:* The Chemical Review Manager (CRM) or Regulatory Action Leader (RAL) identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5026; *fax number:* (703) 308–8090; *e-mail address: costello.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration review case name and No.	Docket ID No.	CRM or RAL, telephone number, E-mail address
Amitrole, 0095	EPA–HQ–OPP–2011–0105	Monica Wait, (703) 347–8019, *wait.monica@epa.gov.*
Ancymidol, 3017	EPA–HQ–OPP–2011–0482	Eric Miederhoff, (703) 347–8028, *miederhoff.eric@epa.gov.*
Bacillus cereus, 6053	EPA–HQ–OPP–2011–0493	Kathleen Martin, (703) 308–2857, *martin.kathleen@epa.gov.*
Bronopol, 2770	EPA–HQ–OPP–2011–0421	Eliza Blair, (703) 308–7279, *blair.eliza@epa.gov.*
DCPA, 0270	EPA–HQ–OPP–2010–0374	Jill Bloom, (703) 308–8019, *bloom.jill@epa.gov.*

TABLE—REGISTRATION REVIEW DOCKETS OPENING—Continued

Registration review case name and No.	Docket ID No.	CRM or RAL, telephone number, E-mail address
Desmedipham, 2150	EPA–HQ–OPP–2010–1044	Russell Wasem, (703) 305–6979, *wasem.russell@epa.gov.*
Emamectin benzoate, 7607	EPA–HQ–OPP–2011–0483	Katherine St Clair, (703) 347–8778, *stclair.katherine@epa.gov.*
Fipronil, 7423	EPA–HQ–OPP–2011–0448	Susan Bartow, (703) 603–0065, *bartow.susan@epa.gov.*
Fludioxonil, 7017	EPA–HQ–OPP–2010–1067	Carissa Cyran, (703) 347–8781, *cyran.carissa@epa.gov.*
Flumioxazin, 7244	EPA–HQ–OPP–2011–0176	Anne Overstreet, (703) 308–8068, *overstreet.anne@epa.gov.*
Glycolic acid and salts, 4045	EPA–HQ–OPP–2011–0422	Seiichi Murasaki, (703) 347–0163, *murasaki.seiichi@epa.gov.*
IPBC (Troysan KK–108A), 2725	EPA–HQ–OPP–2011–0420	Monisha Harris, (703) 308–0410, *harris.monisha@epa.gov.*
Isoxaflutole, 7242	EPA–HQ–OPP–2010–0979	Jose Gayoso, (703) 347–8652, *gayoso.jose@epa.gov.*
o-Benzyl-p-chlorophenol, 2045	EPA–HQ–OPP–2011–0423	Rebecca von dem Hagen, (703) 305–6785, *vondem-hagen.rebecca@epa.gov.*
Permethrin, 2510	EPA–HQ–OPP–2011–0039	Kaitlin Keller, (703) 308–8172, *keller.kaitlin@epa.gov.*
Sulfosulfuron, 7247	EPA–HQ–OPP–2011–0434	Kelly Ballard, (703) 305–8126, *ballard.kelly@epa.gov.*

EPA is also announcing that it will not be opening a docket for cucumber beetle attractant because this pesticide is not included in any products actively registered under FIFRA section 3. The Agency will take separate actions to cancel any remaining FIFRA section 24(c) Special Local Needs registrations with this active ingredient and to propose revocation of any affected tolerances that are not supported for import purposes only.

Lastly, EPA is announcing the availability of amended final work plans for the registration review of the pesticides isoxaben and bifenthrin. The isoxaben final work plan has been amended to incorporate seven additional environmental fate and effects data requirements which were not included in the June 2008 final work plan. The amended isoxaben final work plan is available in registration review docket EPA–HQ–OPP–2007–1038. The bifenthrin final work plan has been amended to incorporate two additional toxicological data requirements which were omitted from the December 2010 final work plan. Additionally, several studies, which were included in the bifenthrin December 2010 final work plan, were removed from the data gaps table and will not be called-in because they are no longer required. The bifenthrin amended final work plan is available in registration review docket EPA–HQ–OPP–2010–0384. Both the isoxaben and bifenthrin dockets are available on-line at *http://regulations.gov.*

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or

information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 15, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–15618 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0006; FRL–8872–5]

Toxic Substances Control Act Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on five chemicals listed in the Toxic Substances Control Act (TSCA) section 4 test rule titled ''*In Vitro* Dermal Absorption Rate Testing of Certain Chemicals of Interest to the Occupational Safety and Health Administration,'' amended by the final rule titled ''Revocation of the TSCA Section 4 Testing Requirements for Certain Chemical Substances.''

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kathy Calvo, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8089; *fax number:* (202) 564–4765; *e-mail address: calvo.kathy@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of these chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. Test Data Submissions

EPA received test data on five chemicals listed in the TSCA section 4 test rule titled ''*In Vitro* Dermal Absorption Rate Testing of Certain Chemicals of Interest to the Occupational Safety and Health Administration,'' published in the **Federal Register** issue of April 26, 2004 (69 FR 22402) (FRL–7312–2), and later amended by a final rule titled ''Revocation of TSCA Section 4 Testing Requirements for Certain Chemical Substances,'' published in the **Federal Register** issue of April 12, 2006 (71 FR 18650) (FRL–7751–7).

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under TSCA section 4(a) (15 U.S.C. 2603(a)). Each notice must:

1. Identify the chemical substance or mixture for which data have been received.

2. List the uses or intended uses of such substance or mixture and the information required by the applicable standards for the development of test data.

3. Describe the nature of the test data developed.

The following table contains the information described in this document. See the applicable CFR cite, listed in the table, for test data requirements. EPA has completed its review and evaluation process for these submissions. The reviews have been added to the docket.

TABLE 1—DATA RECEIVED IN RESPONSE TO TSCA SECTION 4 TEST RULE AT 40 CFR 799.5115, TITLED ''IN VITRO DERMAL ABSORPTION RATE TESTING OF CERTAIN CHEMICALS OF INTEREST TO THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,'' DOCKET ID NUMBER EPA–HQ–OPPT–2003–0006

Chemical identity	Data received	Document No. for the item in docket No. EPA–HQ–OPPT–2003–0006	Chemical use
Vinylidene chloride (Ethene, 1,1-dichloro-) (CASRN 75–35–4).	Vinylidene Chloride: *In Vitro* Dermal Absorption Rate Testing.	0354	Copolymerized with vinyl chloride or acrylonitrile to form various kinds of saran, other copolymers are also made, adhesives, component of synthetic fibers.

TABLE 1—DATA RECEIVED IN RESPONSE TO TSCA SECTION 4 TEST RULE AT 40 CFR 799.5115, TITLED ''IN VITRO DERMAL ABSORPTION RATE TESTING OF CERTAIN CHEMICALS OF INTEREST TO THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,'' DOCKET ID NUMBER EPA–HQ–OPPT–2003–0006—Continued

Chemical identity	Data received	Document No. for the item in docket No. EPA–HQ–OPPT–2003–0006	Chemical use
Dicyclopentadiene ..... (4,7-Methano-1H-indene, 3a,4,7,7a-tetrahydro-) (CASRN 77–73–6).	Percutaneous Absorption and Cutaneous Disposition of [^{14}C]-Dicyclopentadiene *In Vitro* in Human Skin.	0358	Chemical intermediate for insecticides, ethylene propylene diene monomer (EPDM) elastomers, metallocenes, paints and varnishes, flame retardant for plastics.
Methyl isoamyl ketone ..... (2-Hexanone, 5-methyl-) (CASRN 110–12–3).	Percutaneous Absorption and Cutaneous Disposition of [^{14}C]-Methyl Isoamyl Ketone *In Vitro* in Human Skin.	0359	Solvent for nitrocellulose, cellulose acetate butyrate, acrylics, vinyl copolymers.
Diacetone alcohol ..... (2-Pentanone, 4-hydroxy-4-methyl-) (CASRN 123–42–2).	Percutaneous Absorption and Cutaneous Disposition of [^{14}C] -Diacetone Alcohol *In Vitro* in Human Skin.	0360	Solvent for nitrocellulose, cellulose acetate, various oils, resins, waxes, fats, dyes, tars, lacquers, dopes, coating compositions, wood preservatives, stains, rayon and artificial leather, imitation gold leaf, dyeing mixtures, antifreeze mixtures, extraction of resins and waxes, preservative for animal tissue, metal-cleaning compounds, hydraulic compression fluids, stripping agent (textiles), laboratory reagent. The technical grade containing acetone has greater solvent power.
Cyclohexanol (CASRN 108–93–0)	The *In Vitro* Dermal Absorption of ^{14}C–Cyclohexanol through Human Skin.	0371	Soap making to incorporate solvents and phenolic insecticides; source of adiptic acid for nylon textile finishing; solvent for alkyd and phenotic resins; cellulosics; blending agent for lacquers, paints, and varnishes; finish removers; emulsified products; leather degreasing; polishes; plasticizers; plastics; germicides.

Note: CASRN—Chemical Abstract Service Registry Number; Chemical Use Reference—Hawley's Condensed Chemical Dictionary. Fifteenth Ed. Richard J. Lewis, Sr. Published by John Wiley & Sons, Inc., Hoboken, NJ. 2007.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances.

Dated: June 21, 2011.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–16183 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0033; FRL–8872–4]

Toxic Substances Control Act Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on 12 chemicals listed in the Toxic Substance Control Act (TSCA) section 4 test rule titled ''Testing of Certain High Production Volume Chemicals.''

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kathy Calvo, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8089; *fax number:* (202) 564–4765; *e-mail address: calvo.kathy@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

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

566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. Test Data Submissions

EPA received test data on 12 chemicals listed in the TSCA section 4 test rule titled ''Testing of Certain High Production Chemicals,'' published in the **Federal Register** issue of March 16, 2006 (71 FR 13708) (FRL–7335–2).

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under TSCA section 4(a) (15 U.S.C. 2603(a)). Each notice must:

1. Identify the chemical substance or mixture for which data have been received.

2. List the uses or intended uses of such substance or mixture and the information required by the applicable standards for the development of test data.

3. Describe the nature of the test data developed.

The following table contains the information described in this document. See the applicable CFR cite, listed in this table, for test data requirements. EPA has completed its review and evaluation process for these submissions. Reviews have been added to the docket.

TABLE 1—DATA RECEIVED IN RESPONSE TO A TSCA SECTION 4 TEST RULE AT 40 CFR 799.4115, TITLED ''CHEMICAL TESTING REQUIREMENTS FOR CERTAIN HIGH PRODUCTION VOLUME CHEMICALS,'' DOCKET ID NO. EPA–HQ–OPPT–2005–0033

Chemical identity	Data received	Document No. for the item in Docket ID No. EPA–HQ–OPPT–2005–0033	Chemical use
Methane, dibromo (CASRN 74–95–3).	Determination of Vapor Pressure	0254, transmittal; 0254.1	Organic synthesis, solvent.
	Determination of General Physico-Chemical Properties.	0254 and 0254.2.	
	Algal Growth Inhibition Test	0254 and 0254.3.	
	Chromosome Aberration Test in Human Lymphocytes *In Vitro*.	0254 and 0254.5.	
	Acute Toxicity to Rainbow Trout ..	0259, transmittal; 0259.1.	
	Acute Toxicity to Daphnia Magna	0259 and 0259.2.	
	Oral (Gavage) Reproduction/Developmental Toxicity Screening Test in the Rat.	0259, 0259.3, part 1, and 0259.4, part 2.	
1,3-Propanediol, 2,2-bis[(nitrooxy)methyl]-, dinitrate (CASRN 78–11–5).	Reproductive and Developmental Effects of Oral Exposure to Pentaerythritol-Tetranitrate (PETN) in the Rat.	0294, transmittal; and 0294.1	Demolition explosive, blasting caps, detonating compositions, ''Primacord''.
	1. Determination of the Water Solubility 2. *n*-Octanol/Water Partition Coefficient 3. Biodegradation Potential of Pentaerythritol Tetranitrate (PETN).	0294 and 0294.2. Copyrighted document. See note.	
	Toxicity of Pentaerythritol Tetranitrate (PETN) to the Unicellular Green Alga (*Selenastrum capricornutum*) Under Static Test Conditions, Part 1.	0294 and 0294.3.	
	Toxicity of Pentaerythritol Tetranitrate (PETN) to the Unicellular Green Alga (*Selenastrum capricornutum*) Under Static Test Conditions, Part 2, (PETN Analytical Report).	0294 and 0294.4.	
9,10-Anthracenedione (CASRN 84–65–1).	Data for: 1. Melting Point. 2. Boiling Point. 3. Vapor Pressure.	0182, transmittal; 0211	Intermediate for dyes and organics, organic inhibitor, and bird repellent for seeds.
	Physical and Chemical Characteristics of Anthraquinone: n-Octanol/Water Partition Coefficient and Solubility.	0222, transmittal; 0222.1.	
	An Oral Reproduction/Developmental Toxicity Screening Study of Anthraquinone in Rats.	0222 and 0222.2.	

TABLE 1—DATA RECEIVED IN RESPONSE TO A TSCA SECTION 4 TEST RULE AT 40 CFR 799.4115, TITLED "CHEMICAL TESTING REQUIREMENTS FOR CERTAIN HIGH PRODUCTION VOLUME CHEMICALS," DOCKET ID NO. EPA–HQ–OPPT–2005–0033—Continued

Chemical identity	Data received	Document No. for the item in Docket ID No. EPA–HQ–OPPT–2005–0033	Chemical use
2,4-Hexadienoic acid (2E, 4E) (Sorbic acid) (CASRN 110–44–1).	Physical and Chemical Property Tests for: 1. Melting Point. 2. Water Solubility. 3. *n*-Octanol/Water Partition Coefficient. 4. Boiling Point. 5. Vapor Pressure. Fathead Minnow 96-Hour Acute Toxicity Test. Daphnia Magna 48-Hour Acute Toxicity Test. Pimephales Promelas Acute Toxicity Test.	0313 and 0335	Fungicide, food preservative (mold inhibitor), alkyd resin coatings, upgrading of drying oils, cold rubber additive, and intermediate for plasticizers and lubricants.
Dodecane, 1-chloro- (CASRN 112–52–7).	Determination of the Boiling Point/Boiling Range of 1-Chlorodedecane.	0314, transmittal; 0314.6	Solvent, chemical intermediate to make photographic chemicals, pharmaceuticals, organic metallic compounds, and surfactants.
	Determination of the Vapor Pressure of 1-Chlorododecane Using the Static Method.	0314 and 0314.10.	
	1-Chlorododecane: Determination of *n*-Octanol/Water Partition Coefficient.	0314 and 0314.8.	
	Determination of the Water Solubility of 1-Chlorododecane.	0314 and 0314.11.	
	1-Chlorodecane: Evaluation of Ultimate Biodegradability in an Aqueous Medium-Static Test, ISO/FDIS 9888:1999(E)(1)) (Zahn-Wellens Method).	0314 and 0314.9.	
	1-Chlorododecane: A 96-Hour Toxicity Test with the Freshwater Alga (*Pseudokirchneriella subcapitata*).	0314 and 0314.5.	
	A Flow-Through Life-Cycle Toxicity Study of 1-Chlorododecane with the Cladoceran (*Daphnia magna*).	0314 and 0314.7.	
	Acute Oral Toxicity with 1-Chlorododecane: Up and Down Procedure in Rats.	0314 and 0314.1.	
	A Combined 28-Day Repeated Dose Oral Toxicity Study with the Reproduction/Developmental Toxicity Screening Test of 1-Chlorododecane in Rats.	0314 and 0314.4.	
	Bacterial Reverse Mutation Assay of 1-Chlorododecane.	0314 and 314.2.	
	In Vitro Mammalian Chromosome Aberration Test.	0314 and 0314.3.	
Phenol, 4,4′-methylenebis[2,6-bis(1,1-dimethyethyl)-(CASRN 118–82–1).	Existing data for Determination of Water Solubility and *n*-Octanol/Water Partition Coefficient.	0163	Oxidation inhibitor, anti wear agent for motor oils, aviation piston engine oils, industrial oils, anti oxidant for rubbers, resins, and adhesives.
	Existing data for Bacterial Reverse Mutation Test (Ames Test).	0181; transmittal; 0181.2.	
	Re submittal for Bacterial Reverse Mutation Test (Ames Test).	0250, transmittal; 0250.1, and 0250.2.	
	Existing data for Acute Oral Mammalian Toxicity Test.	0181 and 0181.1.	
	Existing data for Reproduction/Developmental Toxicity Screening Test.	0181 and 0181.3.	

TABLE 1—DATA RECEIVED IN RESPONSE TO A TSCA SECTION 4 TEST RULE AT 40 CFR 799.4115, TITLED "CHEMICAL TESTING REQUIREMENTS FOR CERTAIN HIGH PRODUCTION VOLUME CHEMICALS," DOCKET ID NO. EPA–HQ–OPPT–2005–0033—Continued

Chemical identity	Data received	Document No. for the item in Docket ID No. EPA–HQ–OPPT–2005–0033	Chemical use
	Chromosomal Aberration Test with AN–2 Cultured Chinese Hamster Ovary (CHO) Cells.	0257. Copyrighted document. See note.	
	Activated Sludge Die-away Biodegradation Test with AN–2(4,4-methylenebis (2,6-di-tert-butylphenol) Using Non-adapted and Adapted Activated Sludge.	0275.1. Copyrighted document. See note.	
	1. Melting Point 2. Boiling Point. 3. Vapor Pressure.	0274.	
Methanesulfinic acid, 1-hydroxy-, sodium salt (1:1) (CASRN 149–44–0).	1. Existing study for Biodegration Test according to OECD 301B: Degradation of a Product. 2. Existing study for Acute Toxicity to Fish According to DIN Method 38412. 3. Existing study for Acute Toxicity to Daphnia According to OECD 202, Part 1. 4. Existing study for Determination of the 72-hour EC_{50} of "Brueggolit E02" towards Scenedesmus subspicatus (LAUS GmbH). 5. Existing study for Algae Inhibition Test According to OECD 201 (Jaeger).	0238	Stripping and discharge agent for textiles, bleaching agent for molasses, soap.
	1. Melting Point (ASTM E 324) 2. Boiling Point (ASTM E1719), Water Partition Coefficient. 3. Water Solubility (ASTM E 1148) (40 CFR 799.6784). 4. Genetic Toxicity (chromosomal damage) (40 CFR 799.6784). 5. Combined Repeated Dose/Developmental/Reproductive Toxicity Test (40 CFR 799.9365).	0309.	
Heptenone, methyl- (CASRN 409–02–9).	Physicochemical Properties, i.e., Melting Point, Boiling Point, Vapor Pressure, and n-Octanol/Water Partition Coefficient.	0324, transmittal; 0324.15	Organic synthesis, inexpensive perfumes, flavoring.
	Water Solubility	0324 and 0324.13.	
	Ready Biodegradability: OECD 301F Manometric Respirometry Test.	0324 and 0324.12.	
	Fish Acute Toxicity Test	0324 and 0324.11.	
	Daphnia sp., Acute Immobilization Test.	0324 and 0324.10.	
	Alga, Growth Inhibition Test	0324 and 0324.9.	
	Acute Oral Toxicity to the Rat Test.	0324 and 0324.8.	
	Bacterial Reverse Mutation Test	0324 and 0324.6.	
	In Vitro Mammalian Chromosome Aberration Test in Human Lymphocytes.	0324 and 0324.4.	
	Reproductive Developmental Toxicity Screening Test by Oral Gavage Administration to CD Rats.	0324, 0324.1, 0324.2.	

TABLE 1—DATA RECEIVED IN RESPONSE TO A TSCA SECTION 4 TEST RULE AT 40 CFR 799.4115, TITLED "CHEMICAL TESTING REQUIREMENTS FOR CERTAIN HIGH PRODUCTION VOLUME CHEMICALS," DOCKET ID NO. EPA–HQ–OPPT–2005–0033—Continued

Chemical identity	Data received	Document No. for the item in Docket ID No. EPA–HQ–OPPT–2005–0033	Chemical use
Methane, isocyanato-(CASRN 624–83–9).	Robust summaries of publicly available existing data on: 1. Melting Point. 2. Boiling Point. 3. Vapor Pressure. 4. Partition Coefficient. 5. Solubility in Different Media: Solubility in Water. 6. Stability in Water. 7. Biodegradation. 8. Acute/Prolonged Toxicity to Fish 9. Acute Toxicity to Aquatic Invertebrates 10. Toxicity to Aquatic Plants, *e.g.,* Algae	0249	Production of pesticides, polyurethane foam, and plastics.
Benzenesulfonic acid, [[4-[[4-[(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenylamino]-(C.I. Pigment Blue 61) (CASRN 1324–76–1).	These data were claimed as CBI. The public version includes a robust summary of existing data for: 1. Acute Toxicity to Fish. 2. Acute Mammalian toxicity. 3. Ames Bacterial Reverse Mutation. 4. Cytogenetic Micronucleous Assay (Chromosomal damage).	0286 and 0322	Intermediate for antifouling paint agents, catalyst in organic reactions, used by offset ink makers to produce inks for heatset, coldset and sheet-fed applications.
	Existing data for: 1. Melting Point. 2. Boiling Point. 3. Water Solubility.	0185, 0246, and 0280.	
	These data were claimed as CBI. The public version includes a robust summary for n-Octanol/Water Partition Coefficient.	0185, 0246, 0318, and 0280.	
	These data were claimed as CBI. The public version includes a robust summary for Inherent Biodegradation.	0185, 0246, and 0279.	
	Data for Vapor Pressure	0280 and 0318.	
	These data were submitted as CBI. The public version includes data on: 1. Acute Toxicity in Daphnia Magna with C.I. Pigment Blue 61. 2. Fresh Water Algae Growth Inhibition Test with C.I. Pigment Blue 61. 3. Combined 28-Day Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test.	0318.	
C.I. Solvent Black 7 (CASRN 8005–02–5).	Existing data for: Inherent Biodegradation: ISO 9888 (Zahn-Wellens method).	0168, transmittal; 0169, and 0184	Plastics, rubber, Bakelite, ink, paint, carbon paper, and leather shoe coloring.
	Acute Toxicity to Rainbow Trout by Zahn-Wellens test, OECD 302B.	0174 and 0184.	
	Acute Toxicity to Daphnia, Daphnia Static Acute, OECD 202.	0175 and 0184.	
	Acute Toxicity to Plants, Algae Growth Inhibition, OECD 201.	0176 and 0184.	
	Acute Mammalian Toxicity, Rat, OECD 401.	0170 and 0184.	

TABLE 1—DATA RECEIVED IN RESPONSE TO A TSCA SECTION 4 TEST RULE AT 40 CFR 799.4115, TITLED "CHEMICAL TESTING REQUIREMENTS FOR CERTAIN HIGH PRODUCTION VOLUME CHEMICALS," DOCKET ID NO. EPA–HQ–OPPT–2005–0033—Continued

Chemical identity	Data received	Document No. for the item in Docket ID No. EPA–HQ–OPPT–2005–0033	Chemical use
	Reverse Mutation Assay using Salmonella Typhimarium, OECD 471.	0171 and 0184.	
	Micronucleous Assay, Nigrossine Base Ex: Metaphase Analysis in Chi Cells *In Vitro*.	0172 and 0184.	
	Twenty-Eight Day Sub-acute Oral (Gavage) Toxicity Study in the Rat, OECD 407.	0173 and 0184.	
	Determination of Physico-Chemical Properties of C.I. Solvent Black 7, including Melting Point ASTM E 324 (capillary tube).	0290, transmittal; 0290.1, pg. 4; and 0290.2.	
	Boiling Point: ASTM E 1719 (ebulliometry)	0290.1, pg. 7; and 0290.2.	
	Vapor Pressure: ASTM E 1782 (thermal analysis).	0290.1, pg. 15; and 0290.2.	
	n-Octanol/Water Partition Coefficient.	0290, 0290.1, pg. 17; and 0290.2.	
	Water Solubility	0290, 0290.1, pg. 20; and 0290.2.	
	A Prenatal Developmental Toxicity Study of C.I. Solvent Black 7 in Rats by Oral Gavage.	0290, 290.4, and 0184.	
Urea, reaction products with formaldehyde (CASRN 68611–64–3).	For Fulfillment of Data Requirements for Urea, Reaction Products with Formaldehyde under TSCA Section 4.	0360 and 0361	Adhesive or binder for particle board, medium density fiber board, hardwood plywood, glass fiber roofing materials.

Notes:
1. *Chemical use reference:* Hawley's Condensed Chemical Dictionary. Fifteenth Ed. Richard J. Lewis, Sr. published by John Wiley & Sons, Inc. Hoboken, NJ. 2007.
2. Copyrighted publications: See Unit I.B.
3. Terms: ASTM—ASTM International, producer of international voluntary consensus standards (formerly the American Society for Testing and Materials); CASRN—Chemical Abstract Service Registry Number; CBI—Confidential Business Information; DIN—The German Institute for Standardization; ISO/FDIS—International Organization for Standardization/Final Draft International Standard; OECD—Organisation for Economic Cooperation and Development; TSCA—Toxic Substances Control Act.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances.

Dated: June 21, 2011.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–16162 Filed 6–28–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Release of the Exposure Draft Revisions to Identifying and Reporting Earmarked Funds: Amending Statement of Federal Financial Accounting Standards 27

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released the *Exposure Draft Revisions to Identifying and Reporting Earmarked Funds: Amending Statement of Federal Financial Accounting Standards 27.*

The Exposure Draft is available on the FASAB home page *http://www.fasab.gov/board-activities/documents-for-comment/exposure-drafts-and-documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments on the Exposure Draft are requested by August 22, 2011. Comments on the Exposure Drafts should be sent to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pubic Law 92–463.

Dated: June 23, 2011.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2011–16215 Filed 6–28–11; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork

burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before July 29, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via e-mail *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via e-mail *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0819.

Title: Lifeline and Link Up.

Form Number: FCC Form 497.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit and not-for-profit institutions.

Number of Respondents and Responses: 251,400 respondents; 280,450 responses.

Estimated Time per Response: 5 hours.

Frequency of Response: On occasion, monthly, and annual reporting requirements.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 61,386 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection is being submitted as a revision to a currently approved collection. The Commission adopted a Report and Order, released June 21, 2011, *Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up,* WC Docket Nos. 11–42 and 03–109, CC Docket No. 96–45, *Report and Order,* FCC 11–97 (rel. June 21, 2011) (*Lifeline Duplicates Payment Order*), intended to take immediate action to address potential waste, fraud, and abuse in the universal service low income program.

This order takes immediate action to address potential waste in the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) by preventing duplicative program payments for multiple Lifeline-supported services to the same individual. To ensure prompt action to eliminate duplicative Lifeline support, we adopt a final rule clarifying that qualifying low-income consumers may receive no more than a single Lifeline benefit. We also require eligible telecommunications carriers (ETCs) upon notification from the Universal Service Administrative Company (USAC) to de-enroll subscribers that are receiving multiple benefits in violation of that rule. Further, we direct the Commission's Wireline Competition Bureau to send a letter to USAC to implement an administrative process to detect and resolve duplicate claims.

On March 4, 2011, the Commission released a Notice of Proposed Rulemaking to reform and modernize the Lifeline/Link Up program. In the 2011 Lifeline and Link Up NPRM, the Commission underscored its commitment to eliminating waste, fraud, and abuse in Lifeline/Link Up and presented a comprehensive set of proposals to better target support to needy consumers and maximize the number of Americans with access to modern communications services. In the NPRM, we explained that, while we are considering broader reforms to the program, it may be necessary for the Commission to take action to address immediately the harm done to the Universal Service Fund by duplicative claims for Lifeline support. Thus, the duplicate resolution process the Commission directs USAC to implement is an interim measure that will be in place while the Commission considers a more comprehensive resolution of this issue and other issues raised in the 2011 Lifeline and Link Up NPRM.

The Commission plans to submit additional revisions to OMB collection 3060–0819 at a later date seeking approval to collect additional information as stated in the NPRM, pending the outcome of a PIA and SORN to further prevent waste, fraud and abuse of the Lifeline Link Up support mechanism.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–16313 Filed 6–28–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of Financial Institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: June 20, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10370	First Commercial Bank of Tampa Bay	Tampa	FL	06/17/2011
10371	McIntosh State Bank	Jackson	GA	06/17/2011

[FR Doc. 2011–16260 Filed 6–28–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012131.

Title: MOL/Norasia Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd. and Norasia Container Lines Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The agreement authorizes the parties to charter space in the trade from Vietnam to U.S. West Coast.

Agreement No.: 012132.

Title: Crowley/King Ocean Charter and Sailing Agreement.

Parties: Crowley Latin America Services, LLC and King Ocean Services Limited, Inc.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes King Ocean to charter space to Crowley in the trades between ports on the U.S. Atlantic coast and ports in Costa Rica.

By Order of the Federal Maritime Commission.

Dated: June 24, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–16340 Filed 6–28–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 11–10]

Falcon Shipping Inc., Abdiel Falcon—Application for a License as an Ocean Transportation Intermediary Order To Show Cause

Falcon Shipping Inc. (Falcon Shipping) and Mr. Abdiel Falcon submitted an application to operate as both a non-vessel-operating common carrier (NVOCC) and as a freight forwarder (FF) on March 8, 2011. Incorporated in Florida on February 18, 2008, Falcon Shipping is currently located at 4458 NW. 74th Avenue, Miami, FL 33166. Abdiel Falcon is the sole owner, president and secretary of Falcon Shipping, as well as the qualifying individual identified in the license application.

In response to a question on his OTI application, Mr. Falcon answered in the affirmative that he had been arrested, charged, convicted, or forfeited collateral for any felony, misdemeanor or other violation. As documented by the Bureau of Certification and Licensing (BCL) in considering the Falcon Shipping application, on December 29, 2010, Mr. Falcon entered a plea of guilty in the United States District Court for the Southern District of Florida to one felony count of unlawful importation of goods (smuggling), in violation of 18 U.S.C 545.[1] *See* Case No. 1:10–20719–CR–ALTONAGA–2.

On May 18, 2011, BCL issued a letter notifying Mr. Falcon of the Commission's intent to deny Falcon's license application. As reflected in BCL's letter, that action stems from Mr. Falcon's recent felony conviction. Under 46 CFR 515.15, denial of an OTI license is appropriate when the Commission cannot rely upon the character or integrity of the applicant, or its principals, to the extent necessary to ensure future conduct within the requirements of the Shipping Act and the Commission's regulations. BCL concluded that Falcon Shipping and its qualifying individual, Abdiel Falcon, lacked the requisite character to be licensed as an OTI.

In response to BCL's letter of May 18, 2011, Mr. Falcon timely sent an e-mail to Glenda Singleton of BCL requesting a hearing on the denial of his license

[1] 18 U.S.C. 545 states:

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces or attempts to smuggle or clandestinely introduce into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law shall be fined under this title or imprisoned not more than 20 years, or both.

application. Pursuant to such request,[2] this Order directs Respondents Falcon Shipping, Inc. and Mr. Abdiel Falcon, its qualifying individual, to show cause, pursuant to 46 CFR 502.66, why the BCL's determination to deny the OTI license application should not be upheld inasmuch as Mr. Falcon was convicted of a felony charge of unlawful importation of goods in violation of 18 U.S.C. 545 and is still serving probation on such conviction.

Section 19 of the Shipping Act of 1984, 46 U.S.C. 40901, provides that the Commission shall issue an OTI license to a person that the Commission determines to be qualified by experience and character. The Commission's regulations at 46 CFR 515.15 implement the standards for licensing under section 19, and state that:

> If the Commission determines, as a result of its investigation, that the applicant: (a) Does not possess the necessary experience or character to render intermediary services; (b) Has failed to respond to any lawful inquiry of the Commission; or (c) Has made any materially false or misleading statement to the Commission; then a letter of intent to deny the application shall be sent to the applicant * * *

The Commission's regulations thus require denial of an application for an OTI license if the applicant does not possess the necessary character to render OTI services.

It is well established that the burden of proof in a licensing proceeding is on the applicant. *Independent Ocean Freight Forwarder Application—Lesco Packing Co. Inc.,* 19 FMC 132, 136 (FMC 1976). The Commission has previously found that commission of a federal crime rises to the level of the ''most egregious circumstances'' warranting revocation or suspension (and, by analogy, denial) of a license. *In the Matter of Ocean Transportation License in the Name of Apparel Logistics, Inc., Petition for Appeal from Staff Action or in the Alternative for Initiation of an Investigation,* 30 S.R.R. 567, 570 (FMC 2004) (''Prior decisions have held that revoking or suspending an OTI license should be limited to the most egregious circumstances, such as OTIs violating the Shipping Act or Commission regulations, committing other federal offenses, or materially misrepresenting information regarding their qualifications.''), *citing Stallion Cargo, Inc.—Possible Violations of Sections 10(a)(1) and 10 (b) (1) of the Shipping Act of 1984,* 29 S.R.R. 665, 683–84 (FMC 2001); *AAA NordStar Line Inc.—Revocation of License No. 12234,* 29 S.R.R. 663, 663–64 (FMC 2002); *Commonwealth Shipping Ltd., Cargo Carriers Ltd., Martyn C. Merritt and Mary Anne Merritt—Submission of Materially False or Misleading Statements to the Federal Maritime Commission And False Representation of Common Carrier Vessel Operations,* 29 S.R.R. 1408, 1412–1414 (FMC 2003).

Now therefore, it is ordered That pursuant to sections 11 and 19 of the Shipping Act of 1984, Falcon Shipping, Inc. and Abdiel Falcon are hereby directed to show cause why the BCL's determination to deny the OTI license application should not be upheld.

It is further ordered That this proceeding is limited to the submission of facts and memoranda of law;

It is further ordered That Falcon Shipping, Inc. and Abdiel Falcon are named as Respondents in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondents in support of its application no later than July 13, 2011;

It is further ordered That the Commission's Bureau of Enforcement is made a party to this proceeding;

It is further ordered That reply affidavits and memoranda of law shall be filed by the Bureau of Enforcement in opposition to Respondents no later than July 28, 2011;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 2 of the Commission's Rules of Practice and Procedure, 46 CFR 502.2, as well as being mailed (or e-mailed) directly to all parties of record;

Finally, it is ordered That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the final decision of the Commission in this proceeding shall be issued by December 23, 2011.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–16226 Filed 6–28–11; 8:45 am]

BILLING CODE 6730–01–P

[2] While transmitted only to BCL, Mr. Falcon's e-mail request is deemed sufficient under 46 CFR 515.15 to entitle Falcon Shipping to a hearing with respect to his OTI application.

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 July 13, 2011.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Thomas H. Lee (Alternative) Fund VI, L.P., Thomas H. Lee (Alternative) Parallel Fund VI, L.P., Thomas H. Lee (Alternative) Parallel (DT) Fund VI, L.P., THL FBC Equity Investors, L.P., THL Advisors (Alternative) VI, L.P., Thomas H. Lee (Alternative) VI, Ltd., THL Managers VI, LLC, Thomas H. Lee Partners, L.P., Thomas H. Lee Advisors, LLC, Anthony J. DiNovi and Scott M. Sperling, all of Boston, Massachussetts;* to directly acquire 24.9 percent of the voting common stock of First BanCorp, and thereby indirectly acquire FirstBank Puerto Rico, both of San Juan, Puerto Rico.

Board of Governors of the Federal Reserve System, June 24, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–16253 Filed 6–28–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by *Order* to be closely related to banking and permissible for bank holding companies. Unless

otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 2011.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *First Southern Bancorp, Inc., Stanford, Kentucky;* to make a non-controlling investment by acquiring up to 24.99 percent of the voting shares of CKF Bancorp, Inc., and indirectly acquire an interest in its subsidiary, Central Kentucky Federal Savings Bank, both of Danville, Kentucky, pursuant to section 225.28 (b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, June 24, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–16254 Filed 6–28–11; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0163; Docket 2011–0079; Sequence 5]

Information Collection; General Services Administration; Information Specific to a Contract or Contracting Action (Not Required by Regulation)

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding information specific to a contract or contracting action (not required by regulation).

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 29, 2011.

FOR FURTHER INFORMATION CONTACT: William Clark, Procurement Analyst, Acquisition Policy Division, at telephone (202) 219–1813 or e-mail *william.clark@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation)'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation)''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation)'', on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation).

Instructions: Please submit comments only and cite Information Collection 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of supplies, transportation, ADP, telecommunications, real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of public contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting special program objectives.

B. Annual Reporting Burden

Respondents: 126,870.
Responses per Respondent: 1.36.
Total Responses: 172,500
Hours Per Response: .399
Total Burden Hours: 68,900
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), in all correspondence.

Dated: June 17, 2011.

Millisa Gary,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 2011–16343 Filed 6–28–11; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0197; Docket 2011–0079; Sequence 7]

General Services Administration Acquisition Regulation; Information Collection; GSAR Provision 552.237–70, Qualifications of Offerors

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a previously approved information collection requirement regarding the qualifications of offerors.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this

collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Procurement Analyst, Contract Policy Division, GSA, (202) 208–4949 or *michaelo.jackson@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors'', on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors.

Instructions: Please submit comments only and cite Information Collection 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of service contracts. These mission responsibilities generate requirements that are realized through the solicitation and award of contracts for building services. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: *6794.*
Responses per Respondent: *1.*
Hours per Response: *1.*
Total Burden Hours: *6794.*

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors, in all correspondence.

Dated: June 17, 2011.

Millisa Gary,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 2011–16346 Filed 6–28–11; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day 11–0278]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at 404–639–5960 or send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Hospital Ambulatory Medical Care Survey (NHAMCS) (OMB No. 0920–0278) — Revision — National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''utilization of health care'' in the United States. The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992. NCHS is seeking OMB approval to extend this survey for an additional three years, automate data collection, add an additional sample of 60 hospitals and collect additional information through supplements.

The purpose of NHAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The target universe of the NHAMCS is in-person visits made to outpatient departments (OPDs), emergency departments (EDs), and ambulatory surgery locations (ASLs) of non-Federal, short-stay hospitals (hospitals with an average length of stay of less than 30 days) or those whose specialty is general (medical or surgical) or children's, as well as visits to freestanding ambulatory surgery centers (FS–ASCs).

NHAMCS was initiated to complement the National Ambulatory Medical Care Survey (NAMCS, OMB No. 0920–0234), which provides similar data concerning patient visits to physicians' offices. NAMCS and NHAMCS are the principal sources of data on ambulatory care provided in the United States.

NHAMCS provides a range of baseline data on the characteristics of the users and providers of hospital ambulatory medical care. Data collected include patients' demographic characteristics, reason(s) for visit, providers' diagnoses, diagnostic services, medications, and disposition. These data, together with trend data, may be used to monitor the effects of change in the health care

system, for the planning of health services, improving medical education, determining health care work force needs, and assessing the health status of the population.

NHAMCS data collection will be automated. Induction interviews and patient record information will be entered on secure laptops. This effort will greatly reduce paperwork and will increase efficiency in data processing. Data collection activities, including questions asked, will be similar to current procedures.

In 2012, NHAMCS will sample an additional 60 hospitals in order to obtain state-based estimates on emergency department characteristics in five states. This additional sample is part of an effort sponsored by the Department of Health and Human Services' Office of the Assistant Secretary for Preparedness and Response (ASPR), to better monitor the role of EDs and the care that they provide as health care reform in the United States proceeds. State-based estimates will provide both baseline and ongoing information about the status of EDs and ED care as policy changes are implemented.

NHAMCS will also conduct an asthma management supplement, a lookback module, and a pretest of colorectal cancer screening questions. The asthma supplement will collect information on the clinical decisions providers make when confronted with a patient suffering from asthma. The lookback module will collect additional information from the 12 month period prior to a sampled OPD visit, which will identify risk factors and clinical management of patients with conditions that put them at high risk for heart disease and stroke. Finally, a small pretest in hospital-based ASLs and freestanding ASCs will assess the feasibility of obtaining information on colorectal cancer screening during ambulatory surgery visits where a colonoscopy is performed.

Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)	Total Burden Hours
Hospital Chief Executive Officer	Hospital Induction Interview	542	1	1.5	813
Ambulatory Surgery Center Executive Officer.	Freestanding Ambulatory Surgery Center Induction Interview.	200	1	1.5	300
Ancillary Service Executive	Clinic Induction	2,000	1	15/60	500
Physician/Registered Nurse/Medical Record Clerk.	ED Patient Record Form	113	100	7/60	1318
Physician/Registered Nurse/Medical Record Clerk.	OPD Patient Record Form	78	200	9/60	2340
Physician/Registered Nurse/Medical Record Clerk.	ASC Patient Record Form	108	100	7/60	1260
Medical Record Clerk	Medical Records Clerk	893	133	1/60	1979
Physician/Physician Assistant/Nurse Practitioner.	Asthma Supplement	250	1	15/60	63
Total					8,573

Daniel Holcomb,

Reports Clearance Officer, Office of the Chief Science Office. Centers for Disease Control and Prevention.

[FR Doc. 2011–16351 Filed 6–28–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–11–11HU]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel L. Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Web-Based HIV Behavioral Survey Among Men Who Have Sex With Men—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of the proposed information collection is to monitor behaviors related to Human Immunodeficiency Virus (HIV) infection among men who have sex with men (MSM), one of the groups at highest risk for acquiring HIV infection in the United States. Objectives of the proposed web-based behavioral survey of internet-using MSM are to (a) Describe the prevalence of and trends in

risk behaviors; (b) describe the prevalence of and trends in HIV testing; (c) describe the prevalence of and trends in use of HIV prevention services; and (d) identify met and unmet needs for HIV prevention services. This information will be used to monitor progress toward the National HIV/AIDS Strategy objectives, and will be shared with health departments, community based organizations, community planning groups and other stakeholders to improve prevention services.

This project also addresses the goals of CDC's HIV prevention strategic plan, specifically the goal of strengthening the national capacity to monitor the HIV epidemic to better direct and evaluate prevention efforts.

The Centers for Disease Control and Prevention request approval for data collection for a period of 3 years. Data will be collected through anonymous online surveys completed by MSM in 56 U.S. jurisdictions (all 50 U.S. states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands), with oversampling in 21 metropolitan statistical areas (MSAs) with high AIDS prevalence.

Internet-using MSM will be recruited through a direct marketing method that utilizes selective placement of banner advertisements on non-profit and privately owned websites. Individuals interested in learning more about the survey will click on the banner ad and will be directed to a one-minute screening interview to determine eligibility for participation in a behavioral assessment with an estimated duration of 14 minutes. The data from the assessment will provide estimates of behavior related to the risk of HIV and other sexually transmitted diseases, history of HIV testing, and use of HIV prevention services. No other federal agency collects this type of information nationally from MSM. These data are expected to have substantial impact on prevention program development and monitoring at the local, state, and national levels.

CDC estimates that the proposed web-based behavioral assessment will involve, per year in the 56 U.S. jurisdictions and 21 oversampled MSAs, eligibility screening of 309,090 persons. Of these, an estimated 139,090 either will not be interested in completing the behavioral assessment or will be ineligible after completing the screener and an estimated 170,000 eligible persons will participate in the behavioral assessment, resulting in a total of 510,000 eligible survey respondents and 417,270 ineligible screened persons during a 3-year period.

Participation of respondents is voluntary and there is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Persons screened for eligibility	Eligibility Screener	309,090	1	1/60	5,152
Eligible persons	Behavioral Assessment.	170,000	1	14/60	39,667
TOTAL					44,819

Daniel L. Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–16332 Filed 6–28–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 9 a.m.—5 p.m., July 15, 2011.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018, Telephone (859)334–4611, Fax (859)334–4619.

Status: Open to the public, but without a public comment period. To access by conference call dial the following information 1(866)659–0537, Participant Pass Code 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters to be Discussed: The agenda for the Subcommittee meeting includes: Selection of individual radiation dose reconstruction cases to be considered for review by the Subcommittee to evaluate the implementation of the Program Evaluation Report: OCAS–PER–012—Evaluation of Highly Insoluble Plutonium Compounds; pre-selection of new radiation dose reconstruction cases for review (set 15); discussion of dose reconstruction cases

under review (sets 7–10); OCAS dose reconstruction quality management and assurance activities.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for more Information: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1(800) CDC–INFO, e-mail *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–16402 Filed 6–28–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned subcommittee:

TIME AND DATE: 9 a.m.–5 p.m., July 14, 2011.

PLACE: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018, Telephone (859)334–4611, Fax (859)334–4619.

STATUS: Open to the public, but without a public comment period. To access by conference call dial the following information: (866)659–0537, Participant Pass Code 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the ABRWH to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

PURPOSE: The ABRWH is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor.

MATTERS TO BE DISCUSSED: The agenda for the Subcommittee meeting includes discussion of the Norton Company Special Exposure Cohort Petition (1962–2009) and discussion of the following ORAU and OCAS procedures: ORAUT–RPRT–0044 (''Analysis of Bioassay Data with a Significant Fraction of Less-Than Results''), OCAS TIB–0013 (''Special External Dose Reconstruction Considerations for Mallinckrodt Workers''), OTIB–019 (''Analysis of Coworker Bioassay Data for Internal Dose Assignment''), OTIB–0029 (''Internal Dosimetry Coworker Data for Y–12''), OTIB–0047 (''External Radiation Monitoring at the Y–12 Facility During the 1948–1949 Period''), OTIB–0049 (''Estimating Doses for Plutonium Strongly Retained in the Lung''), OTIB–0052 (''Parameters to Consider When Processing Claims for Construction Trade Workers''), OTIB–0054 (''Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses''), and OTIB–0070 (''Dose Reconstruction During Residual Radioactivity Periods at Atomic Weapons Employer Facilities''); and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

This meeting is open to the public, but without a public comment period. In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513)533–6800, Toll Free 1(800) CDC–INFO, E-mail *dcas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–16381 Filed 6–28–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Evaluation of Adolescent Pregnancy Prevention Approaches: Baseline Data Collection.

OMB No.: 0970–0360.

Description: The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

The Evaluation of Adolescent Pregnancy Prevention Approaches (PPA) is one of these efforts. PPA is a random assignment evaluation which will expand available evidence on effective ways to reduce teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to eight program sites. The findings from the evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

OAH and ACF are proposing baseline data collection activity as part of the PPA evaluation. Baseline data collection instruments were already approved on July 26, 2010. The project has worked in recent months to secure grantees as evaluation sites, and as part of this effort the project has undertaken making revisions to the baseline instrument with each site. These revisions were undertaken because each site has unique features (*e.g.* target population; curriculum; objectives) and the baseline instruments were tailored to take these features into account. OAH and ACF are now requesting emergency clearance to collect data using site-specific instruments.

Respondents will be asked to answer carefully selected questions about demographics and risk and protective factors related to teen pregnancy. Information from this data collection will be used to perform meaningful analysis to determine significant program effects.

Respondents: The survey data will be collected through private, self-administered questionnaires completed by study participants, *i.e.* adolescents assigned to a select school or community teen pregnancy prevention program or a control group. Surveys will be distributed and collected by trained professional staff.

ANNUAL BURDEN ESTIMATES

Site/program (and name of baseline instrument)	Annualized no. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours (annual)
Children's Hospital of Los Angeles/Project AIM	467	1	.7	327
Oklahoma Institute of Child Advocacy/Power Through Choices	360	1	.6	216
Engender Health/Gender Matters	375	1	.6	225
Ohio Health/T.O.P.P.	200	1	.7	140
Live the Life Ministries/WAIT Training	533	1	.7	373
Princeton Center for Leadership Training (PCLT)/TeenPEP	533	1	.6	320
Total	2468	.....	.....	1601

Estimated Total Annual Burden Hours: 1601.

Additional Information:

ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by July 1, 2011. A copy of this information collection, with applicable supporting documentation, may be obtained by e-mailing *OPREinfocollection@acf.hhs.gov.*

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Fax (202) 395–6974.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–16290 Filed 6–28–11; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0439]

Agency Information Collection Activities; Proposed Collection; Comment Request; FDA 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 the reporting requirements on FDA recalls.

DATES: Submit either electronic or written comments on the collection of information by August 29, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr. PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests

or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Recall Regulations—21 CFR Part 7 (OMB Control Number 0910–0249)—Extension

Section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371) and part 7 (21 CFR part 7), subpart C set forth the recall regulations (guidelines) and provide guidance to manufacturers on recall responsibilities. The guidelines apply to all FDA regulated products (i.e., food, including animal feed; drugs, including animal drugs; medical devices, including in vitro diagnostic products; cosmetics; biological products intended for human use; and tobacco). These responsibilities include development of a recall strategy that requires time by the firm to determine the actions or procedures required to manage the recall (§ 7.42); providing FDA with complete details of the recall including reason(s) for the removal or correction, risk evaluation, quantity produced, distribution information, firm's recall strategy, a copy of any recall communication(s), and a contact official (§ 7.46); notifying direct accounts of the recall, providing guidance regarding further distribution, giving instructions as to what to do with the product, providing recipients with a ready means of reporting to the recalling firm (§ 7.49); and submitting periodic status reports so that FDA may assess the progress of the recall. Status report information may be determined by, among other things, evaluation return reply cards, effectiveness checks and product returns (§ 7.53); and providing the opportunity for a firm to request in writing that FDA terminate the recall (§ 7.55(b)).

A search of the FDA database was performed to determine the number of recalls, and terminations that took place during fiscal years 2008 to 2010. The resulting number of total recalls (9,303) and terminations (2,858) from this database search were then averaged over the 3 years, and the resulting per year average of recalls (3,101) and terminations (953) are used in estimating the current annual reporting burden for this report. FDA estimates the total annual industry burden to collect and provide the previous information to be 443,820 burden hours.

The following is a summary of the estimated annual burden hours for recalling firms (manufacturers, processors, and distributors) to comply with the voluntary reporting requirements of FDA's recall regulations. Recognizing that there may be a vast difference in the information collection and reporting time involved in different recalls of FDA's regulated products, FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Recall strategy (§ 7.42)	3,101	1	3,101	20	62,020
Firm initiated recall and recall communications (§§ 7.46 and 7.49)	3,101	1	3,101	30	93,030
Recall status reports and followup (§ 7.53)	2,148	13	27,924	10	279,240
Termination of a recall (§ 7.55(b))	953	1	953	10	9,530
Total					443,820

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual reporting burdens are explained as follows:

I. Total Annual Reporting

A. Recall Strategy

Request firms develop a recall strategy including provision for public warnings and effectiveness checks. Under this portion of the collection of information, the Agency estimates it will receive 3,101 responses annually based on the average number of recalls over the last 3 fiscal years.

B. Firm Initiated Recall and Recall Communications

Request firms voluntarily remove or correct foods and drugs (human or animal), cosmetics, medical devices, biologics, and tobacco to immediately notify the appropriate FDA district office of such actions. The firm is to provide complete details of the recall reason, risk evaluation, quantity produced, distribution information, firms' recall strategy and a contact official as well as requires firms to notify their direct accounts of the recall and to provide recipients with a ready means of reporting to the recalling firm. Under these portions of the collection of information, the Agency estimates it will receive 3,101 responses annually based on the average number of recalls over the last 3 fiscal years.

C. Recall Status Reports

Request that recalling firms provide periodic status reports so FDA can ascertain the progress of the recall. This request only applies to firms with active recalls, and is estimated to be reported every 2 to 4 weeks. This collection of information will generate approximately 27,924 responses annually, based on the average number of recalls over the last 3 fiscal years (3,101), less the average number of terminations over the last 3

fiscal years (953), multiplied by the conservative frequency of reporting per year (13).

D. Termination of a Recall

Provide the firms an opportunity to request in writing that FDA end the recall. The Agency estimates it will receive 953 responses annually based on the average number of terminations over the past 3 fiscal years.

II. Hours per Response Estimates

FDA has no information which would allow it to make a calculated estimate on the hours per response burden to FDA regulated firms to conduct recalls. Variables in the type of products, the quantity and level of distribution and the various circumstances of recall notifications could cause the hours per response to vary significantly. The best guesstimate of average burden hours per response from previous information collection request reports are utilized again for the current estimates on burden hours per response.

Dated: June 23, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–16252 Filed 6–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0502]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; National Consumer Surveys on Understanding the Risks and Benefits of FDA—Regulated Medical Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 29, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *Fax:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title ''National Consumer Surveys on Understanding the Risks and Benefits of FDA–Regulated Medical Products.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794.

JonnaLynn.Capezzuto@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

National Consumer Surveys on Understanding the Risks and Benefits of FDA–Regulated Medical Products—(OMB Control Number 0910–NEW)

Risks and benefits are inherent in all FDA-regulated medical products, including drugs, biologics, and medical devices (*e.g.,* pacemakers, implantable cardiac defibrillators, contact lenses, infusion pumps). FDA plays a critical oversight role in managing and preventing injuries and deaths related to medical product use. However, the users of FDA-regulated products are ultimately the ones who determine which products are used and how they are potentially misused. For this reason, it is critical that the public understand the risks and benefits of FDA-regulated medical products to a degree that allows them to make rational decisions about product use.

FDA's responsibility includes communicating about medical products. This encompasses communications that FDA generates and those it oversees through regulation of product manufacturers' and distributors' communications. Activities include, but are not limited to, recall notices, warnings, public health advisories and notifications, press releases, and information made available on its Web site. FDA also regulates communications drafted and disseminated by manufacturers and distributors of many medical products, including all the communications (advertising and labeling) about prescription drugs, biologics, and restricted medical devices, and a subset of communications (omitting advertising) about nonprescription drugs and other medical devices. In order to conduct educational and public information programs relating to these responsibilities, as authorized by section 1003(d)(2)(D) of the Federal Food Drug and Cosmetic Act (21 U.S.C. 393(d)(2)(D)), it is beneficial for FDA to conduct research and studies relating to health information as authorized by section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)).

In conducting such research, FDA will employ nationally representative surveys of consumers to assess whether the information being disseminated by both the Agency and the entities it regulates is appropriately reaching targeted audiences in an understandable fashion. Specifically, the surveys will assess public understanding about the benefits and risks of medical products and FDA's role in regulating these products. The surveys will assess behaviors and beliefs related to the use of medical products, when consumers desire emerging risk information, the likelihood of reporting serious side effects that might be associated with medical product use, perceptions of the credibility of FDA and other potential sources of risk and benefit information, and satisfaction with FDA's communications-related performance.

Parallel surveys of 1,500 noninstitutionalized U.S. adults will be administered. One survey of 1,500 subjects will be a telephone survey, and the second survey of another 1,500 subjects will be conducted with members from an Internet panel. Both survey samples will be constructed to be representative of the U.S. population, and both will take approximately 15 minutes to administer. Results from each survey will be compared to provide insight into the best methodology for future studies.

The information collected will be used by FDA in the development of more effective risk communication strategies and messages. The surveys will provide FDA insight as to how well the public understands and incorporates risk/benefit information into their belief structures, and how well the public understands the context within which FDA makes decisions on medical product recalls and warnings. Using this information, the Agency will more effectively design messages and select formats and distribution channels that have the greatest potential to influence the target audience's attitudes and behavior in a favorable way. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; *Type of Respondents:* Members of the public.

In the **Federal Register** of October 5, 2010 (75 FR 61490), FDA published a 60-day notice requesting public comment on the proposed collection of

information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondent	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretests	30	1	30	0.25 (15 min.)	8
Screener	6,700	1	6,700	0.10 (6 min.)	670
Telephone survey	1,500	1	1,500	0.25 (15 min.)	375
Internet panel survey	1,500	1	1,500	0.25 (15 min.)	375
Total					1,428

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 23, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–16251 Filed 6–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0436]

International Conference on Harmonisation; Draft Guidance on Q11 Development and Manufacture of Drug Substances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q11 Development and Manufacture of Drug Substances.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance describes approaches to developing process and drug substance understanding and provides guidance on what information should be provided in certain sections of the Common Technical Document (CTD). The draft guidance is intended to harmonize the scientific and technical principles relating to the description and justification of the development and manufacturing process of drug substances (both chemical entities and biotechnological/biological entities) to enable a consistent approach for providing and evaluating this information across the three regions.

DATES: Although you can comment on any guidance at any time (*see* 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 1, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the Guidance

John Smith, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 2619, Silver Spring, MD 20993–0002, 301–796–1757; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

Regarding the ICH

Michelle Limoli, Office of International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 3506, Silver Spring, MD 20993–0002, 301–796–4600.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as

observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In May 2011, the ICH Steering Committee agreed that a draft guidance entitled ''Q11 Development and Manufacture of Drug Substances'' should be made available for public comment. The draft guidance is the product of the Q11 Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q11 Expert Working Group.

The draft guidance describes approaches to developing process and drug substance understanding, and provides guidance on what information should be provided in sections 3.2.S.2.2 through 3.2.S.2.6 of the CTD. The draft guidance provides further clarification on the principles and concepts described in ICH guidances ''Q8 Pharmaceutical Development,'' ''Q9 Quality Risk Management,'' and ''Q10 Pharmaceutical Quality Systems'' as they pertain to the development and manufacture of drug substance. The guidance is applicable to drug substances as defined in the ''Scope'' sections of ICH guidances ''Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances'' and ''Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products.'' The draft guidance is intended to harmonize the scientific and technical principles relating to the description and justification of the development and manufacturing process (CTD sections 3.2.S.2.2. through 3.2.S.2.6) of drug substances (both chemical entities and biotechnological/biological entities) to enable a consistent approach for providing and evaluating this information across the three regions.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

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 *http://www.regulations.gov, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: June 23, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–16255 Filed 6–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Advisory Committee for Pharmaceutical Science and Clinical Pharmacology; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science and Clinical Pharmacology.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 27, 2011, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You'', click on ''Public Meetings at the FDA White Oak Campus''. Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *Fax:* 301–847–8533, *e-mail: ACPS–CP@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On July 27, 2011, the committee will discuss current strategies for FDA's Office of Pharmaceutical Science implementation of quality by design principles within its review offices, incorporating an update on the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use Activities. The committee will also receive awareness presentations on FDA's current partnering with the United States Pharmacopeia, principally to discuss the Monograph Modernization Program.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 20, 2011. Oral presentations from the public will be scheduled between approximately 10:45 a.m. to 11:15 a.m. and 3:30 p.m. to 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an

indication of the approximate time requested to make their presentation on or before July 13, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 14, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Yvette Waples at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 23, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–16234 Filed 6–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

New Proposed Collection; Comment Request; Environmental Science Formative Research Methodology Studies for the National Children's Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval. This proposed information collection was previously published in the **Federal Register** on April 27, 2011, pages 23603–23605, and allowed 60 days for public comment. One written comment was received. The comment questioned the cost and utility of the study specifically and of federally funded biomedical research in general. The purpose of this notice is to allow an additional 30 days for public comment.

Proposed Collection

Title: Environmental Science Formative Research Methodology Studies for the National Children's Study (NCS).

Type of Information Collection Request: Generic Clearance.

Need and Use of Information Collection: The Children's Health Act of 2000 (Pub. L. 106–310) states:

(a) PURPOSE.—It is the purpose of this section to authorize the National Institute of Child Health and Human Development* to conduct a national longitudinal study of environmental influences (including physical, chemical, biological, and psychosocial) on children's health and development.

(b) IN GENERAL.—The Director of the National Institute of Child Health and Human Development* shall establish a consortium of representatives from appropriate Federal agencies (including the Centers for Disease Control and Prevention, the Environmental Protection Agency) to—

(1) plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of both chronic and intermittent exposures on child health and human development; and

(2) investigate basic mechanisms of developmental disorders and environmental factors, both risk and protective, that influence health and developmental processes.

(c) REQUIREMENT.—The study under subsection (b) shall—

(1) incorporate behavioral, emotional, educational, and contextual consequences to enable a complete assessment of the physical, chemical, biological, and psychosocial environmental influences on children's well-being;

(2) gather data on environmental influences and outcomes on diverse populations of children, which may include the consideration of prenatal exposures; and

(3) consider health disparities among children, which may include the consideration of prenatal exposures.

To fulfill the requirements of the Children's Health Act, the results of formative research will be used to maximize the efficiency (measured by scientific robustness, participant and infrastructure burden, and cost) of environmental sample collection procedures and technology, storage procedures, accompanying questionnaires, and assays, and thereby inform data collection methodologies for the National Children's Study (NCS) Vanguard and Main Studies. With this submission, the NCS seeks to obtain OMB's generic clearance to collect environmental samples from homes and child care settings, and conduct accompanying short surveys related to the physical and chemical environment.

The results from these formative research projects will inform the feasibility (scientific robustness), acceptability (burden to participants and study logistics) and cost of NCS Vanguard and Main Study environmental sample and information collection in a manner that minimizes public information collection burden compared to burden anticipated if these projects were incorporated directly into either the NCS Vanguard or Main Study.

Frequency of Response: Annual [As needed on an on-going and concurrent basis].

Affected Public: Members of the public, researchers, practitioners, and other health professionals.

Type of Respondents: Women of child-bearing age, fathers, public health and environmental science professional organizations and practitioners, and schools and child care organizations. These include both persons enrolled in the NCS Vanguard Study and their peers who are not participating in the NCS Vanguard Study.

Annual reporting burden: See Table 1. The annualized cost to respondents is estimated at: $780,000 (based on $10 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, ENVIRONMENTAL SCIENCE

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Home Air	NCS participants	4,000	1	1	4,000

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, ENVIRONMENTAL SCIENCE—Continued

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
Home Water	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
Home Dust	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
School and Child Care Facility Air	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
School and Child Care Facility Water.	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
School and Child Care Facility Dust.	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
Small, focused survey and instrument design and administration.	NCS participants	4,000	2	1	8,000
	Members of NCS target population (not NCS participants).	4,000	2	1	8,000
	Health and Social Service Providers.	2,000	1	1	2,000
	Community Stakeholders	2,000	1	1	2,000
Focus groups	NCS participants	2,000	1	1	2,000
	Members of NCS target population (not NCS participants).	2,000	1	1	2,000
	Health and Social Service Providers.	2,000	1	1	2,000
	Community Stakeholders	2,000	1	1	2,000
Cognitive interviews	NCS participants	500	1	2	1,000
	Members of NCS target population (not NCS participants).	500	1	2	1,000
Total		69,000			78,000

Request for comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Sarah L. Glavin, Deputy Director, Office of Science Policy, Analysis and Communication, National Institute of Child Health and Human Development, 31 Center Drive, Room 2A18, Bethesda, Maryland 20892, or call non-toll free number (301) 496–1877 or E-mail your request, including your address to *glavins@mail.nih.gov.*

DATES: *Comments due date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: June 21, 2011.

Sarah L. Glavin,

Deputy Director, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development.

[FR Doc. 2011–16300 Filed 6–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

New Proposed Collection; Comment Request; Biospecimen and Physical Measures Formative Research Methodology Studies for the National Children's Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval. This proposed information collection was previously published in the **Federal Register** on April 27, 2011, pages 23609–23611, and allowed 60 days for public comment. One written comment was received. The comment questioned the cost and utility of the study and federally funded biomedical research in general. The purpose of this notice is to allow an additional 30 days for public comment.

Proposed Collection:

Title: Biospecimen and Physical Measures Formative Research Methodology Studies for the National Children's Study (NCS).

Type of Information Collection Request: Generic Clearance.

Need and Use of Information Collection: The Children's Health Act of 2000 (Pub. L. 106–310) states:

(a) *Purpose.*—It is the purpose of this section to authorize the National Institute of Child Health and Human Development* to conduct a national longitudinal study of environmental influences (including physical, chemical, biological, and psychosocial) on children's health and development.

(b) *In General.*—The Director of the National Institute of Child Health and Human Development* shall establish a consortium of representatives from appropriate Federal agencies (including the Centers for Disease Control and Prevention, the Environmental Protection Agency) to—

(1) plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of both chronic and intermittent exposures on child health and human development; and

(2) investigate basic mechanisms of developmental disorders and environmental factors, both risk and protective, that influence health and developmental processes.

(c) *Requirement.*—The study under subsection (b) shall—

(1) incorporate behavioral, emotional, educational, and contextual consequences to enable a complete assessment of the physical, chemical, biological, and psychosocial environmental influences on children's well-being;

(2) gather data on environmental influences and outcomes on diverse populations of children, which may include the consideration of prenatal exposures; and

(3) consider health disparities among children, which may include the consideration of prenatal exposures.

To fulfill the requirements of the Children's Health Act, the results of formative research tests will be used to maximize the efficiency (measured by scientific robustness, participant and infrastructure burden, and cost) of biospecimen and physical measurement collection procedures, accompanying questionnaires, storage and information management processes, and assay procedures, thereby informing data collection methodologies for the National Children's Study (NCS) Vanguard and Main Studies. With this submission, the NCS seeks to obtain OMB's generic clearance to conduct formative research featuring biospecimen and physical measurement collections.

The results from these formative research projects will inform the feasibility (scientific robustness), acceptability (burden to participants and study logistics) and cost of NCS Vanguard and Main Study biospecimen collection procedures and physical measurements in a manner that minimizes public information collection burden compared to burden anticipated if these projects were incorporated directly into either the NCS Vanguard or Main Study.

Frequency of Response: Annual [As needed on an on-going and concurrent basis].

Affected Public: Members of the public, researchers, practitioners, and other health professionals.

Type of Respondents: Women of child-bearing age, infants, children, fathers, health care facilities and professionals, public health professional organizations and practitioners, and hospital administrators.

These include both persons enrolled in the NCS Vanguard Study and their peers who are not participating in the NCS Vanguard Study.

Annual reporting burden: See Table 1. The annualized cost to respondents is estimated at: $600,000 (based on $10 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, BIOLOGICAL AND PHYSICAL MEASURES

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Blood:					
Adult	NCS participants	4,000	1	0.5	2,000
	Members of NCS target population (not NCS participants).	4,000	1	0.5	2,000
Infant/Child	NCS participants	2,000	1	0.5	1,000
	Members of NCS target population (not NCS participants).	2,000	1	0.5	1,000
Urine:					
Adult	NCS participants	4,000	1	0.25	1,000
	Members of NCS target population (not NCS participants).	4,000	1	0.25	1,000
Infant/Child	NCS participants	2,000	1	0.25	500
	Members of NCS target population (not NCS participants).	2,000	1	0.25	500
Hair:					

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, BIOLOGICAL AND PHYSICAL MEASURES—Continued

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adult	NCS participants	4,000	1	0.25	1,000
	Members of NCS target population (not NCS participants).	4,000	1	0.25	1,000
Nails:					
Adult	NCS participants	2,000	1	0.25	500
	Members of NCS target population (not NCS participants).	2,000	1	0.25	500
Cervical Fluid:					
Women	NCS participants	4,000	1	0.5	2,000
	Members of NCS target population (not NCS participants).	4,000	1	0.5	2,000
Breast Milk:					
Women	NCS participants	4,000	1	0.5	2,000
	Members of NCS target population (not NCS participants).	4,000	1	0.5	2,000
Cord Blood:					
Infant/Child	NCS participants	2,000	1	0.25	500
	Members of NCS target population (not NCS participants).	2,000	1	0.25	500
Meconium:					
Infant/Child	NCS participants	2,000	1	0.25	500
	Members of NCS target population (not NCS participants).	2,000	1	0.25	500
Placenta:					
Infant	NCS participants	4,000	1	0.25	1,000
	Members of NCS target population (not NCS participants).	4,000	1	0.25	1,000
Length:					
Infant	NCS participants	2,000	1	0.25	500
	Members of NCS target population (not NCS participants).	2,000	1	0.25	500
Height:					
Child	NCS participants	2,000	1	0.25	500
	Members of NCS target population (not NCS participants).	2,000	1	0.25	500
Weight:					
Infant/Child	NCS participants	2,000	1	0.25	500
	Members of NCS target population (not NCS participants).	2,000	1	0.25	500
Head Circumference:					
Infant/Child	NCS participants	2,000	1	0.25	500
	Members of NCS target population (not NCS participants).	2,000	1	0.25	500
Middle Upper Arm Circumference:					
Infant/Child	NCS participants	2,000	1	0.25	500
	Members of NCS target population (not NCS participants).	2,000	1	0.25	500
Ulnar Length:					
Infant/Child	NCS participants	2,000	1	0.25	500
	Members of NCS target population (not NCS participants).	2,000	1	0.25	500
Small, focused survey and instrument design and administration.	NCS participants	4,000	2	1	8,000
	Members of NCS target population (not NCS participants).	4,000	2	1	8,000

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, BIOLOGICAL AND PHYSICAL MEASURES—Continued

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
	Health and Social Service Providers.	2,000	1	1	2,000
	Community Stakeholders	2,000	1	1	2,000
Focus groups	NCS participants	2,000	1	1	2,000
	Members of NCS target population (not NCS participants).	2,000	1	1	2,000
	Health and Social Service Providers.	2,000	1	1	2,000
	Community Stakeholders	2,000	1	1	2,000
Cognitive interviews	NCS participants	500	1	2	1,000
	Members of NCS target population (not NCS participants).	500	1	2	1,000
Total	.....	113,000	.....	.....	60,000

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Sarah L. Glavin, Deputy Director, Office of Science Policy, Analysis and Communication, National Institute of Child Health and Human Development, 31 Center Drive Room 2A18, Bethesda, Maryland, 20892, or call non-toll free number (301) 496–1877 or e-mail your request, including your address to *glavins@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: June 21, 2011.

Sarah L. Glavin,

Deputy Director, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development.

[FR Doc. 2011–16299 Filed 6–28–11; 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, Endogenous Insulin Secretion Preservation.

Date: July 27, 2011.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@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 23, 2011

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–16298 Filed 6–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals,

the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review of PAR–11–144 NIDCR U01 Competitive Revision.

Date: July 14, 2011.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: NIH, Democracy 1, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Wagenaar Miller, PhD, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Rm 666, Bethesda, MD 20892, 301–594–0652, *rwagenaa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–16296 Filed 6–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Oncological Sciences.

Date: August 1–2, 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: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA Panel: HIV/AIDS Modeling Research.

Date: August 2, 2011.

Time: 12 to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Hilary D. Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–16363 Filed 6–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3320–EM; Docket ID FEMA–2011–0001]

Mississippi; Amendment No. 4 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Mississippi (FEMA–3320–EM), dated May 4, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective June 17, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–16390 Filed 6–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1968–DR; Docket ID FEMA–2011–0001]

California; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–1968–DR), dated April 18, 2011, and related determinations.

DATES: *Effective Date:* June 20, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 18, 2011.

Monterey County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: June 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–16393 Filed 6–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1979–DR; Docket ID FEMA–2011–0001]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1979–DR), dated May 9, 2011, and related determinations.

DATES: *Effective Date:* June 21, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 9, 2011.

Weakley County for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–16384 Filed 6–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1983–DR; Docket ID FEMA–2011–0001]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1983–DR), dated May 11, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 17, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–16387 Filed 6–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1989–DR; Docket ID FEMA–2011–0001]

Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1989–DR), dated June 6, 2011, and related determinations.

DATES: *Effective Date:* June 21, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 6, 2011.

Canadian, Delaware, Grady, Kingfisher, Logan, and McClain Counties for Public Assistance (already designated for Individual Assistance).

Blaine, Caddo, Jefferson, LeFlore, Major, and Osage Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–16388 Filed 6–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1991–DR; Docket ID FEMA–2011–0001]

Illinois; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–1991–DR), dated June 7, 2011, and related determinations.

DATES: *Effective Date:* June 14, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 14, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–16385 Filed 6–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1968–DR; Docket ID FEMA–2011–0001]

California; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–1968–DR), dated April 18, 2011, and related determinations.

DATES: *Effective Date:* June 20, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 18, 2011.

Monterey County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

June 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–16394 Filed 6–28–11; 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; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–1976–DR), dated May 4, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now April 12, 2011, through and including May 20, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated. June 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–16369 Filed 6–28–11; 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; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1976–DR), dated May 4, 2011, and related determinations.

DATES: *Effective Date:* June 20, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have

been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2011.

Floyd County for Individual Assistance (already designated for Public Assistance, including direct Federal assistance).

Marion County for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

June 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–16362 Filed 6–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities; Form N–600K, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day notice of information collection under review: form N–600K, application for citizenship and issuance of certificate under section 322. OMB Control No. 1615–0087.

The Department of Homeland Security, U.S. Citizenship and Immigration Services will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until August 29, 2011.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997, or via e-mail at *USCISFRComment@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0087 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate under Section 322.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–600K, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—*Individuals or households.* This form provides an organized framework for establishing the authenticity of an applicant's eligibility and is essential for providing prompt, consistent and correct processing of such applications for citizenship under section 322 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,950 responses at 1 hour and 35 minutes (1.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,670 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: June 24, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–16267 Filed 6–28–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–63]

Notice of Submission of Proposed Information Collection to OMB; Housing Counseling Program—Biennial Agency Performance Review

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD-approved agencies are non-profit and government organizations that provide housing services. The information collected allows HUD to monitor and provide oversight for agencies approved to participate in the Housing Counseling Program. Specifically, the information collected is used to ensure that participating agencies comply with program policies and regulations and to determine if agencies remain eligible to maintain an approval status. Housing counseling aids tenants and homeowners in

improving their housing conditions and in meeting the responsibilities of tenancy and homeownership.

DATES: *Comments Due Date: July 29, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0574) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing Counseling Program—Biennial Agency Performance Review.

OMB Approval Number: 2502–0574.

Form Numbers: HUD–9910.

Description of the Need for the Information and its Proposed Use:

HUD-approved agencies are non-profit and government organizations that provide housing services. The information collected allows HUD to monitor and provide oversight for agencies approved to participate in the Housing Counseling Program. Specifically, the information collected is used to ensure that participating agencies comply with program policies and regulations and to determine if agencies remain eligible to maintain an approval status. Housing counseling aids tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership.

Frequency of Submission: Biennially.

Reporting Burden	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
	583	1	.....	2.499	.....	1,457

Total Estimated Burden Hours: 1,457.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *June 23, 2011.*

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–16323 Filed 6–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–62]

Notice of Submission of Proposed Information Collection to OMB Housing Counseling Program-Application for Approval as a Housing Counseling Agency

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

National, regional, Multi-State intermediaries and Local public and private nonprofit agencies that provide housing counseling services directly or through their affiliates or branches regarding home buying, homeownership and rental housing programs submit an application for designation as a HUD-approved housing counseling agency. HUD uses the information to evaluate the agency and to populate Agency profile data in the Housing Counseling System (HCS) database. This data populates HUD's Web site and automated 1–800 Hotline.

DATES: *Comments Due Date: July 29, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0573) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov; fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing Counseling Program—Application for Approval as a Housing Counseling Agency.

OMB Approval Number: 2502–0573.

Form Numbers: HUD–9900.

Description of the Need for the Information and its Proposed Use: National, regional, Multi-State intermediaries and Local public and private nonprofit agencies that provide housing counseling services directly or through their affiliates or branches regarding home buying, homeownership and rental housing programs submit an application for designation as a HUD-approved housing counseling agency. HUD uses the information to evaluate the agency and to populate agency profile data in the Housing Counseling System (HCS) database. This data populates HUD's Web site and automated 1–800 Hotline.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	200	1		8		1,600

Total Estimated Burden Hours: 1,600.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 23, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–16325 Filed 6–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–61]

Notice of Submission of Proposed Information Collection to OMB Prepayment of Direct Loans on Section 202 and 202/8 Projects With Inclusion of FHA Mortgage Guidelines

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This collection is a request for approval of prepayment of a direct Loan and additional necessary documentation from an owner of a multifamily housing project financed under Section 202 of the National Housing Act. Review of the information will determine if the conditions of the original mortgage will be met and if prepayment may be granted.

DATES: *Comments Due Date: July 29, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0554) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov. fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Prepayment of Direct Loans on Section 202 and 202/8 Projects with Inclusion of FHA Mortgage Guidelines.

OMB Approval Number: 2502–0554.

Form Numbers: HUD–9808.

Description of the Need for the Information and its Proposed Use: This collection is a request for approval of prepayment of a direct Loan and additional necessary documentation from an owner of a multifamily housing project financed under Section 202 of the National Housing Act. Review of the information will determine if the conditions of the original mortgage will be met and if prepayment may be granted.

Frequency of Submission: On occasion, Other Reporting is voluntary based on the owner's decision to prepay the mortgage.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	280	1		2		560

Total Estimated Burden Hours: 560.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 23, 2011.

Colette Pollard,

Departmental Reports Management Officer. Office of the Chief Information Officer.

[FR Doc. 2011–16328 Filed 6–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–59]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Financial Management Template

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Public Housing Assessment System requires public housing agencies to submit financial information annually to HUD. The Uniform Financial Reporting Standards for HUD housing programs requires that this information be submitted electronically, using generally accepted accounting principles, in a prescribed format. The Operating Fund Program regulation (24 CFR Part 990) requires PHAs to submit information at a project level.

DATES: *Comments Due Date: July 29, 2011*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535–0107) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Financial Management Template.

OMB Approval Number: 2535–0107.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The Public Housing Assessment System requires public housing agencies to submit financial information annually to HUD. The Uniform Financial Reporting Standards for HUD housing programs requires that this information be submitted electronically, using generally accepted accounting principles, in a prescribed format. The Operating Fund Program regulation (24 CFR 990) requires PHAs to submit information at a project level.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	4,106	189		0.0549		42,620

Total Estimated Burden Hours: 42,620.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 22, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–16333 Filed 6–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–58]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Assessment System (PHAS) Appeals, Technical Reviews and Database Adjustments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Under the Public Housing Assessment System (PHAS), public housing agencies (PHAs) may submit a request for a technical review, database adjustment or appeal. The granting of such a request would result in a PHA's PHAS score and/or designation being changed, or a project's physical condition, financial condition, or management operations score being changed. The right of appeal is statutory and the right to request a technical review or database adjustment is regulatory.

DATES: *Comments Due Date:* July 29, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

approval Number (2577–0257) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Assessment System (PHAS) Appeals, Technical Reviews and Database Adjustments.

OMB Approval Number: 2577–0257.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

Under the Public Housing Assessment System (PHAS), public housing agencies (PHAs) may submit a request for a technical review, database adjustment or appeal. The granting of such a request would result in a PHA's PHAS score and/or designation being changed, or a project's physical condition, financial condition, or management operations score being changed. The right of appeal is statutory and the right to request a technical review or database adjustment is regulatory.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,700	1		5.2		8,840

Total Estimated Burden Hours: 8,840.

Status: Existing collection in use without an OMB Control Number.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 22, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–16334 Filed 6–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–60]

Notice of Submission of Proposed Information Collection to OMB; Fellowship Recruitment for the Fellowship Placement Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The purpose of this notice is to recruit potential fellows for the Fellowship Placement Pilot Program under the Office of Policy Development and Research (PD&R) of the Department of Housing and Urban Development (HUD). HUD is in the process of putting out a notice to receive preliminary applications to select a third party to administrate the Fellowship Placement Pilot Program. When a third party is selected to administer the fellowship program, the third party will be responsible for recruiting and selecting fellows for the program. The attached document is an application that will allow the third party to recruit fellows for the fellowship program.

DATES: *Comments Due Date:* July 29, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528—Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Fellowship Recruitment for the Fellowship Placement Program.

OMB Approval Number: 2528—Pending.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The purpose of this notice is to recruit potential fellows for the Fellowship Placement Pilot Program under the Office of Policy Development and Research (PD&R) of the Department of Housing and Urban Development (HUD). HUD is in the process of putting out a notice to receive preliminary applications to select a third party to administrate the Fellowship Placement Pilot Program. When a third party is selected to administer the fellowship program, the third party will be responsible for recruiting and selecting fellows for the program. The attached document is an application that will allow the third party to recruit fellows for the fellowship program.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	25	1		0.6		15

Total Estimated Burden Hours: 15.
Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 22, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–16330 Filed 6–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2011–N132; 91200–1231–00AP–M4]

Proposed Information Collection; Mourning Dove Call Count Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on January 31, 2012. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by August 29, 2011.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail or hand delivery); or *INFOCOL@fws.gov* (e-mail). Please include ''1018–0010'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at 703–358–2482 (telephone) or *INFOCOL@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Migratory Bird Treaty Act (16 U.S.C. 703–712) and Fish and Wildlife Act of 1956 (16 U.S.C. 742a–754j–2) designate the Department of the Interior as the primary agency responsible for:

- Wise management of migratory bird populations frequenting the United States, and
- Setting hunting regulations that allow for the well-being of migratory bird populations.

These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The Mourning Dove Call Count Survey is an essential part of the migratory bird management program. The survey is a cooperative effort between the Service and State wildlife agencies and local and tribal biologists. Each spring, State, Service, local, and tribal biologists conduct the survey to provide the necessary data to determine the population status of the mourning dove. If this survey were not conducted, we would not be able to properly determine the population status of mourning doves prior to setting regulations. The Service and the States use the survey results to:

- Develop annual regulations for hunting mourning doves,
- Plan and evaluate dove management programs, and
- Provide specific information necessary for dove research.

II. Data

OMB Control Number: 1018–0010.
Title: Mourning Dove Call Count Survey.
Service Form Number(s): 3–159.
Type of Request: Extension of currently approved collection.

Description of respondents: State, local, and tribal employees.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Estimated Annual Number of Responses: 912.

Estimated Total Annual Burden Hours: 3,314 hours. We believe 80 percent of the respondents will enter data electronically, with an average reporting burden of 3 hours and 40 minutes per respondent. For all others, we estimate the reporting burden to be 3.5 hours per respondent.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask 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: June 23, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011–16281 Filed 6–28–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2011–N133; [91200–1231–00AP–M4]

Proposed Information Collection; North American Woodcock Singing Ground Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on January 31, 2012. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by August 29, 2011.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail or hand delivery); or *INFOCOL@fws.gov* (e-mail). Please include ''1018–0019'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at 703–358–2482 (telephone) or *INFOCOL@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Migratory Bird Treaty Act (16 U.S.C. 703–712) and Fish and Wildlife Act of 1956 (16 U.S.C. 742a–754j–2) designate the Department of the Interior as the primary agency responsible for:

- Wise management of migratory bird populations frequenting the United States, and
- Setting hunting regulations that allow for the well-being of migratory bird populations.

These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The North American Woodcock Singing Ground Survey is an essential part of the migratory bird management program. State, Federal, Provincial, local, and tribal conservation agencies conduct the survey annually to provide the data necessary to determine the population status of the woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the woodcock. We use the information primarily to develop recommendations for hunting regulations. Without information on the population's status, we might promulgate hunting regulations that (1) Are not sufficiently restrictive, which could cause harm to the woodcock population, or (2) are too restrictive, which would unduly restrict recreational opportunities afforded by woodcock hunting. The Service, State conservation agencies, university associates, and other interested parties use the data for various research and management projects.

II. Data

OMB Control Number: 1018–0019.

Title: North American Woodcock Singing Ground Survey.

Service Form Number(s): 3–156.

Type of Request: Extension of currently approved collection.

Description of Respondents: State, Provincial, local, and tribal employees.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Estimated Annual Number of Responses: 680.

Estimated Total Annual Burden Hours: 1,206 hours. We believe 544 persons (80 percent of the respondents) will enter data electronically, with an average reporting burden of 1.8 hours per respondent. For all other respondents, we estimate the reporting burden to be 1.67 hours per respondent.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask 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: June 23, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011–16278 Filed 6–28–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2011–N092; 10120–1113–0000–C2]

Endangered and Threatened Wildlife and Plants; Amendment to the Draft Recovery Plan for the Columbia Basin Distinct Population Segment of the Pygmy Rabbit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of an amendment to the Draft Recovery Plan for the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (*Brachylagus idahoensis*) for public review and comment. This amendment updates the recovery strategies and objectives that were developed in the 2007 Draft Recovery Plan, based on new information about genetics, disease risk, and habitat associations of the species.

DATES: We must receive any comments on the amendment to the draft recovery plan on or before August 29, 2011.

ADDRESSES: An electronic copy of the draft recovery plan amendment is available at *http://www.fws.gov/endangered/species/recovery-plans.html* and *http://www.fws.gov/pacific/ecoservices/endangered/recovery/plans.html.* Copies of the draft recovery

plan amendment are also available by request from the U.S. Fish and Wildlife Service, Eastern Washington Field Office, 11103 E. Montgomery Drive, Spokane Valley, WA 99206 (*telephone:* 509–891–6839). Written comments and materials regarding this draft recovery plan amendment should be addressed to the above address.

FOR FURTHER INFORMATION CONTACT: Chris Warren, Fish and Wildlife Biologist, by writing to the above address, by calling 509–893–8020, or by electronic mail at: *chris_warren@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans help guide conservation efforts by describing actions considered necessary for the recovery of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the measures needed for recovery. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. A draft recovery plan for the Columbia Basin pygmy rabbit was made available for public comment from September 7 to November 6, 2007 (72 FR 51461). The recovery plan has not yet been finalized; because new scientific information has substantially changed our recommended recovery strategy, we are now publishing this amendment to the draft recovery plan for additional public comment before we prepare a final recovery plan.

We will consider all comments we receive during the public comment period. Substantive comments may or may not result in changes to the recovery plan; comments regarding recovery plan implementation will be forwarded to appropriate Federal or other entities so that they can take them into account during the course of implementing recovery actions. Responses to individual commenters will not be provided, but we will provide a summary of how we addressed substantive comments in an appendix to the final recovery plan.

Pygmy rabbits are typically found in habitat types that include tall, dense stands of sagebrush (*Artemisia spp.*), on which they are highly dependent for both food and shelter throughout the year. Historically, pygmy rabbits were found throughout the semi-arid sagebrush steppe biome of the Great Basin and adjacent intermountain regions of the western United States, including portions of Oregon, California, Nevada, Utah, Idaho, Montana, Wyoming, and Washington. The population within the Columbia Basin of central Washington is disjunct from the remainder of the species' range. Museum specimens and sighting records indicate that during the first half of the 20th century, the Columbia Basin pygmy rabbit likely occurred in portions of six Washington counties: Douglas, Grant, Lincoln, Adams, Franklin, and Benton. This range declined due to large-scale loss and fragmentation of native shrub-steppe habitats, primarily for agricultural development, and by the late 1980s it was known only from southern Douglas County. We listed the Columbia Basin distinct population segment of the pygmy rabbit under emergency provisions of the Act on November 30, 2001 (66 FR 59734), and fully listed it as endangered on March 5, 2003 (68 FR 10388).

The last known wild population of the Columbia Basin pygmy rabbit was extirpated in 2004, and an experimental release of 20 captive individuals in 2007 failed. The remaining captive population is derived from controlled intercross breeding between Columbia Basin individuals and pygmy rabbits of the same taxonomic classification from Idaho, and currently comprises 92 individuals averaging 65 percent Columbia Basin ancestry. The condition of the captive population has deteriorated in recent years due to poor reproductive success, soil-borne diseases, habituation to captive conditions, and genetic bottlenecks. The prospects for long-term viability of the population in captivity are considered poor. The recovery plan amendment recommends that, to effectively reintroduce captive rabbits to the wild, 100 to 200 rabbits should be released annually for up to 3 years; this program will include supplementation of the captive pygmy rabbits with wild pygmy rabbits translocated from outside of the Columbia Basin. The amendment also recommends surveys of suitable habitat within the Columbia Basin to locate undiscovered populations of wild Columbia Basin pygmy rabbits.

Public Comments Solicited

We solicit written comments on the amendment to the draft recovery plan described in this notice. All comments received by the date specified above will be considered in development of a final recovery plan for the Columbia Basin pygmy rabbit.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 8, 2011.

Theresa E. Rabot,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2011–16379 Filed 6–28–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2011–N065; 10120–1112–0000–F3]

Endangered and Threatened Wildlife and Plants; Proposed Programmatic Safe Harbor Agreement for the Lahontan Cutthroat Trout in Southeastern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of permit application.

SUMMARY: The Oregon Department of Fish and Wildlife (ODFW) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The permit application includes a proposed Programmatic Safe Harbor Agreement (Agreement) between the ODFW and the Service. The requested permit would authorize the ODFW to extend incidental take coverage with assurances to eligible landowners who are willing to carry out habitat management measures that would benefit the threatened Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) by enrolling them under the Agreement as Cooperators through issuance of Certificates of Inclusion. The covered area or geographic scope of this Agreement includes the Quinn River, Coyote Lake, and Alvord basins located in Harney and Malheur Counties, Oregon. The Service is making the permit application, proposed Agreement, and related documents available for public review and comment.

DATES: All comments must be received from interested parties on or before July 29, 2011.

ADDRESSES: Please address written comments to Nancy Gilbert, Field Supervisor, Bend Field Office, U.S. Fish and Wildlife Service, 20310 Empire Ave., Ste. A–100, Bend, OR 97701. Alternatively, you may send comments by facsimile to (541) 383–7638. Please include your name and return address in your comments and refer to the ''Lahontan Cutthroat Trout Programmatic Safe Harbor Agreement.''

FOR FURTHER INFORMATION CONTACT: Nancy Gilbert, Field Supervisor, Bend Field Office (*see* **ADDRESSES** above); telephone (541) 383–7146. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by contacting the Service's Bend Field Office (*see* **ADDRESSES** above), or by making an appointment to view the documents at the above address during normal business hours. These documents are also available electronically for review on the Service's Bend Field Office Web site at *http://www.fws.gov/oregonfwo/FieldOffices/Bend/.* Comments and materials we receive, as well as supporting documentation we used in preparing the Agreement, will become part of the public record and will be available for public inspection, by appointment, during normal business hours. 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.

Background

The Lahontan cutthroat trout was listed as an endangered species by the Service in 1970 (35 FR 16047; October 13, 1970) and reclassified as threatened in 1975 (40 FR 29863; July 16, 1975). The primary threats affecting Lahontan cutthroat trout include habitat degradation, habitat fragmentation, and hybridization with and competition from introduced nonnative salmonids. On March 30, 2009, the Service completed a 5-year status review of the Lahontan cutthroat trout that determined that ''Lahontan cutthroat trout populations have been and continue to be impacted by nonnative species interactions, habitat fragmentation and isolation, degraded habitat conditions, drought, and fire.'' Furthermore, the status review found that ''[t]he present or threatened destruction, modification, or curtailment of [the] Lahontan cutthroat trout's habitat and range continues to be a significant threat and in some instances is increasing in magnitude and severity.''

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA (16 U.S.C. 1531 *et seq.*). Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring the landowners that they will not be subjected to increased property use restrictions as a result of their efforts to either attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits for Safe Harbor Agreements are found in 50 CFR 17.22(c). These permits allow any necessary future incidental take of any covered species above the mutually agreed upon baseline conditions for those species in accordance with the terms of the permit and accompanying agreement.

Proposed Agreement

We jointly developed the proposed Agreement with the ODFW for the conservation of the Lahontan cutthroat trout. The proposed term of the permit and Agreement is 30 years. The area covered by this Agreement includes all non-Federal land portions of the Quinn River, Coyote Lake, and Alvord basins located in Harney and Malheur Counties, Oregon; these areas comprise the estimated historical and current distribution of the species in Oregon. Sites within basins not currently occupied by the Lahontan cutthroat trout will have a baseline condition of zero unless a landowner is willing to accept a baseline greater than zero to support an enhanced level of conservation after the Agreement expires. Sites within basins currently occupied by the Lahontan cutthroat trout will have their baseline conditions determined on a case-by-case basis, with landowner consent.

The purpose of this Agreement is to enhance the reintroduction and long-term recovery of the Lahontan cutthroat trout within the Northwest Geographic Management Unit that includes the Quinn River, Coyote Lake, and Alvord basins in southeastern Oregon, by encouraging private landowners to voluntarily create, enhance, maintain, or restore Lahontan cutthroat trout habitat. Under this Agreement, private lands may be enrolled through individual Cooperative Agreements between the ODFW and cooperating landowners (Cooperators). The duration of the Cooperative Agreements will be a minimum of 10 years. Cooperators will be issued a Certificate of Inclusion, which will allow activities on the enrolled properties to be covered by ODFW's section 10(a)(1)(A) Enhancement of Survival permit. Cooperators may renew their Cooperative Agreements to remain in effect for the 30-year duration of the permit.

Cooperators will avoid conducting activities that could adversely affect the Lahontan cutthroat trout's habitat during the term of their Cooperative Agreement. Using site-specific Cooperative Agreements, ODFW intends to enroll landowners who are willing to allow the introduction or expansion of Lahontan cutthroat trout within streams on their private lands. Landowners would also voluntarily commit to engage in conservation practices that may include: Control of herd stocking rates and seasons, livestock exclusion, off-site water development, alternative haying, crop selection modification, fertilizer management, and modification of irrigation practices. Several additional conservation measures that may be implemented include: Road or trail management, including improved stream crossings or fish passage structures; riparian vegetation plantings and rehabilitation projects; and stream habitat improvement projects.

Without the regulatory assurances provided through the Agreement and permit, landowners may be unwilling or reluctant to engage in activities that would place federally listed species such as the Lahontan cutthroat trout onto their properties. The proposed Agreement is expected to provide a net conservation benefit to the Lahontan cutthroat trout in Oregon by expanding and possibly creating new populations through translocations or by enhancing the quality, quantity, or connectivity of existing habitat for naturally occurring populations, thereby increasing the distribution and abundance of the species.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for a categorical exclusion under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.;* NEPA). We explain the basis for this determination in an Environmental Action Statement that is also available for public review (*see* **AVAILABILITY OF DOCUMENTS** section above). The Service will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1)(A) of the ESA and NEPA regulations.

If we determine that all requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to ODFW for the take of Lahontan cutthroat trout, incidental to otherwise lawful activities in accordance with the terms of the Agreement. This notice is provided pursuant to section 10(c) of the ESA and NEPA regulations (40 CFR 1506.6).

Dated: June 21, 2011.

Paul Henson,

State Supervisor, Oregon Fish and Wildlife Office, Portland, Oregon.

[FR Doc. 2011–16336 Filed 6–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT924000/L14300000.FR0000; SDM 98838]

Notice of Application for Disclaimer of Interest; Pennington County, South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application has been filed with the Bureau of Land Management (BLM) by Larin Roozenboom and Laura Roozenboom (hereafter ''the applicants''), for a recordable Disclaimer of Interest from the United States. This notice is intended to inform the public of the pending application.

DATES: Comments must be received on or before September 27, 2011.

ADDRESSES: Address all written comments to Cynthia Staszak, Chief, Branch of Land Resources, BLM Montana State Office, 5001 Southgate Drive, Billings, MT 59101–4669. Only written comments will be accepted. Refer to serial No. SDM 98838.

FOR FURTHER INFORMATION CONTACT: Tami Lorenz, BLM Montana State Office, 5001 Southgate Drive, Billings, MT 59101–4669; 406–896–5053. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pursuant to Section 315 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1745), and the regulations contained in 43 CFR Part 1864, a recordable disclaimer, if issued, will confirm that the United States has no valid interest. The recordable Disclaimer of Interest application is for the surface and subsurface estate in the following described land:

Black Hills Meridian

T. 2 N., R. 6 E.,
Sec. 7, SE¼SE¼.

The parcel located within the above described land contains 6.50 acres in Pennington County.

The SE¼SE¼ of sec. 7 is divided by a county boundary line which separates Meade County and Pennington County. The line runs east to west along the north side of the southern section line. There are approximately 6.50 acres between the county boundary and the south section line. The Federal surface and subsurface estate to be disclaimed lies within the Black Hills National Forest.

Public Sale Patent No. 3863 dated June 1, 1898, conveyed T. 2 N., R. 6 E., Black Hills Meridian sec. 7, SE¼SE¼, containing 40 acres, out of Federal ownership. Subsequent land transactions occurred between 1898 and October 16, 1900, when the same legal description was deeded back to the United States through Warranty Deed (WD) from Price & Baker Company. The legal description was correct, but erroneously cited only Meade County. The document was only recorded in Meade County.

Pennington County's records, therefore, showed a tax delinquency, so the County sold the 6.50 acres in a tax sale on June 25, 1943, to L.A. Eberlein, the applicants' predecessor in interest. The cloud on the applicants' title was the initial error of not recording the document conveying ownership back to the United States in Pennington County, and Pennington County's subsequent error of selling the 6.50 acres for non-payment of taxes.

All persons who wish to present comments, suggestions, or objections in connection with the proposed disclaimer may do so by writing to the undersigned authorized officer at the above address. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1864.2.

Cynthia Staszak,

Chief, Branch of Land Resources.

[FR Doc. 2011–16348 Filed 6–28–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI00000.L71220000.FM0000. LVTF7724IDOO (IDI–35073)]

Public Land Order No. 7772; Partial Revocation of the Executive Order dated April 17, 1926; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a withdrawal created by an Executive Order insofar as it affects 369.68 acres of public lands withdrawn from settlement, sale, location or entry under the public land laws for protection of springs and waterholes and designated as Public Water Reserve No. 107. This order also opens the lands to exchange.

DATES: *Effective Date:* June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Laura Bingham, BLM, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, (208) 373–3866 or Jan Parmenter, BLM, Idaho Falls District Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7562.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has determined that portions of the withdrawal created by an Executive Order dated April 17, 1926, for Public Water Reserve No. 107 are no longer used for the purpose for which the lands were withdrawn, and partial revocation of the withdrawal is needed to facilitate a pending land exchange.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. The withdrawal created by an Executive Order dated April 17, 1926, which created Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described lands:

Boise Meridian

T. 11 N., R. 16 E.,
Sec. 4, lot 5;
Sec. 9, lot 5;
Sec. 10, lots 1, 4, 5, and 8, and NE¼SW¼;
Sec. 11, lot 1, SE¼NW¼, NE¼NE¼;SW¼W½NE¼SW¼, and E½SE¼NE¼SW¼, Sec. 12, W½NW¼NW¼NW¼, S½NW¼NW¼, and S½NE¼NW¼.
T. 11 N., R. 17 E.,
Sec. 6, lots 61 and 77.

The areas described aggregate 369.68 acres in Custer County.

2. At 9 a.m., on June 29, 2011, the lands described in Paragraph 1 will be open to exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1716, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law.

Authority: 43 CFR part 2370.

Dated: June 15, 2011.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2011–16401 Filed 6–28–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000–14300000–ET0000; HAG–11–0167; OROR–44410]

Public Land Order No. 7771; Extension of Public Land Order No. 6865; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6865 for an additional 20-year period. The extension is necessary to continue protection of the significant historic and cultural resource values along with the investment of Federal funds at the National Historic Oregon Trail Interpretive Center at Flagstaff Hill.

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

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, Bureau of Land Management, Oregon/Washington State Office, 503–808–6189, or Sarah LeCompte, Bureau of Land Management Oregon Vale Field Office, 541–523–1825.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension in order to continue protection of the significant historic and cultural resource values along with the investment of Federal funds at the National Historic Oregon Trail Interpretive Center at Flagstaff Hill. The withdrawal extended by this order will expire on July 16, 2031, unless as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6865 (56 FR 32515 (1991)), which withdrew 507.50 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch 2), but not from leasing under the mineral leasing laws or disposal under the mineral materials laws, to protect the National Historic Oregon Trail Interpretive Center at Flagstaff Hill, is hereby extended for an additional 20-year period until July 16, 2031.

Authority: 43 CFR 2310.4.

Dated: June 16, 2011.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2011–16400 Filed 6–28–11; 8:45 am]

BILLING CODE 4310–33–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rate

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a) (3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.074% (.00074) for tier 2 for calendar year 2011. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the final fee rate on class II revenues for calendar year 2011 shall be one-half of the annual fee rate, which is 0.037% (.00037).

FOR FURTHER INFORMATION CONTACT: Chris White, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax (202) 632–7066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a semi-annual basis.

The regulations of the Commission and the final rate being adopted today are effective for calendar year 2011. Therefore, all gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission by June 30, 2011.

Dated: June 24, 2011.

Tracie Stevens,

Chairwoman.

Dated: June 24, 2011.

Steffani A. Cochran,

Vice-Chairwoman.

Dated: June 24, 2011.

Daniel Little,

Associate Commissioner.

[FR Doc. 2011–16377 Filed 6–28–11; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–06/24–7784; 2330–RYY]

Agency Information Collection Activities: Extension of a Currently Approved Information Collection

AGENCY: National Park Service, Interior.

ACTION: Notice of a revision of a currently approved information collection (1024–0224).

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection request (ICR) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR which is an extension of a currently approved collection of information (OMB #1024–0224). We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Public comments will be accepted on or before July 29, 2011.

ADDRESSES: Please submit written comments on this ICR to the OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via e-mail to *oira_docket@omb.eop.gov* or fax at 202–395–5806; and reference Information Collection 1024–0224 in the subject line. Please also submit a copy of your comments to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail): or *phadrea_ponds@nps.gov* (e-mail); and reference Information Collection 1024–0224 in the subject line.

FOR FURTHER INFORMATION CONTACT: Dr. Bruce Peacock, Chief, NPS Social Science Division, 1201 Oakridge Drive, Fort Collins, CO 80525; 970–267–2106 (Phone); 970–225–3597 (Fax); or *Bruce_Peacock@nps.gov* (e-mail). To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (Information Collection Review, Currently under Review).

SUPPLEMENTARY INFORMATION:

I. Abstract

The NPS needs information concerning park visitors and visitor services, potential park visitors, and residents of communities near parks to provide National Park Service (NPS) managers with usable knowledge for improving the quality and utility of agency programs, services, and planning efforts. Since many of the NPS surveys are similar in terms of the populations being surveyed, the types of questions being asked, and research methodologies, the NPS proposes to renew its clearance from OMB for a generic Information Collection (1024–0224) of NPS-sponsored surveys. Since 1999, the benefits of this generic approval program have been significant to the NPS, Department of the Interior, OMB, NPS cooperators, and the public. Significant time and cost savings have been incurred and 514 surveys have been conducted in units throughout the National Park System. Approval was typically granted in 60 days or less from the date the Principal Investigator (PI) first submitted the survey package for review. This is a significant reduction over the approximately 6–8 months involved in the regular OMB review process. From FY 1999 through FY 2010, the generic ICR process has produced an estimated cost savings to the Federal government and PIs of $1,017,495.

II. Data

Title: Programmatic Clearance for NPS-Sponsored Public Surveys.

OMB Control Number: 1024–0224.

Current Expiration Date: June 30, 2011.

Type of Request: Extension of a currently approved collection.

Affected Public: General Public; visitors and potential visitors to parks, and residents of communities near parks.

Respondent Obligation: Voluntary.

Frequency of Collection: One-time; on occasion.

Estimated Number of Annual Responses: 57,500.

Annual Burden Hours: 19,350 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: June 24, 2011.

Robert M. Gordon,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2011–16321 Filed 6–28–11; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0611–7686; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 11, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 14, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

James Gabbert,

Acting Chief, National Register of Historic Places, National Historic Landmarks Program.

ARIZONA

Maricopa County

Koontz, Kinter K., (North Central Phoenix Farmhouses and Rural Estate Homes, 1895–1959) 7620 N. 7th St., Phoenix, 11000463

ARKANSAS

Clark County

Arkadelphia Commercial Historic District, Roughly Main St. between 5th & 7th Sts.,

& Clinton St. between 6th & 9th Sts., Arkadelphia, 11000464

COLORADO

Arapahoe County

Englewood Post Office, 3332 S. Broadway, Englewood, 11000465

DISTRICT OF COLUMBIA

District of Columbia

Linnaean Hill (Boundary Increase), 3545 Williamsburg Ln., NW., Washington, 11000466

MINNESOTA

Fillmore County

Bridge No. 5722, N. Section St. over Spring Valley Cr., Spring Valley, 11000467

Houston County

Bridge No. 6679, MN 76 over S. Fork of Root R. (Sheldon Township), Houston, 11000468

Swift County

Gethsemane Episcopal Church, 40 N. Hering St., Appleton, 11000469

Traverse County

District No. 44 School, U.S. 75 (Taylor Township), Campbell, 11000470

MISSISSIPPI

Lee County

Baldwyn Historic District, Roughly along E. & W. Main Sts. & N. & S. 2nd Ave., Baldwyn, 11000471

Webster County

Eupora Historic District, Roughly along N. Dunn St. & W. Roane Ave., Eupora, 11000472

Winston County

Downtown Louisville Historic District, Bounded by Church St., W. Park St., Columbus Ave. & Mill St., Louisville, 11000473

Yazoo County

Rosedale Plantation, 5302 Bend Rd., Vaughan, 11000474

NEW MEXICO

McKinley County

Borrego Pass Trading Post Historic District, Bldg. 1601, Co. Rd. 19, Borrego Pass, 11000475

WASHINGTON

Whatcom County

Lynden Department Store, 444 Front St., Lynden, 11000476

WISCONSIN

Rock County

Eager, Almeron, Funerary Monument and Plot, 8012 N. Cemetery Rd., Evansville, 11000477

Sauk County

Rest Haven Motel, E5116 U.S. 14, Spring Green, 11000478

Vernon County

Vernon County Normal School, 410 S. Center Ave., Viroqua, 11000479

[FR Doc. 2011–16248 Filed 6–28–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 14, 2011, Pharmagra Labs, Inc., 158 McLean Road, Brevard, North Carolina 28712, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Pentobarbital (2270), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed substances for analytical research and clinical trials.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than August 29, 2011.

Dated: June 22, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–16294 Filed 6–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 11, 2011, and published in the **Federal Register** on April 19, 2011, 76 FR 21915, Meda Pharmaceuticals, Inc., 705 Eldorado Street, Decatur, Illinois 62523, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance as a finished drug product in dosage form only for distribution to its customers. The company does not import the listed controlled substance in bulk active pharmaceutical ingredient (API) form.

There are no domestic sources of Nabilone in finished drug product form available in the United States. The U.S. Food and Drug Administration has approved this product for medical use in the United States.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and § 952(a), and determined that the registration of Meda Pharmaceuticals Inc. to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Meda Pharmaceuticals Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: June 22, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–16286 Filed 6–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP; BJA Docket No. 1561]

Meeting of the Department of Justice's (DOJ's) National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of DOJ's National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee to discuss the role of the NMVTIS Federal Advisory Committee Members and various issues relating to the operation and implementation of NMVTIS.

DATES: The meeting will take place on Wednesday, July 13, 2011, from 8:30 a.m. to 4:30 p.m. E.T.

ADDRESSES: The meeting will take place at the Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202; *Phone:* (703) 418–6800.

FOR FURTHER INFORMATION CONTACT: Alissa Huntoon, Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street Northwest, Washington, DC 20531; *Phone:* (202) 305–1661 [**note: this is not a toll-free number**]; *E-mail: Alissa.Huntoon@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Members of the public who wish to attend this meeting must register with Ms. Alissa Huntoon at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Please bring photo identification and allow extra time prior to the meeting. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

Anyone requiring special accommodations should notify Ms. Huntoon at least seven (7) days in advance of the meeting.

Purpose

The NMVTIS Federal Advisory Committee will provide input and recommendations to the Office of Justice Programs (OJP) regarding the operations and administration of NMVTIS. The primary duties of the NMVTIS Federal Advisory Committee will be to advise the Bureau of Justice Assistance (BJA) Director on NMVTIS-related issues, including but not limited to: Implementation of a system that is self-sustainable with user fees; options for alternative revenue-generating opportunities; determining ways to enhance the technological capabilities of the system to increase its flexibility; and options for reducing the economic burden on current and future reporting entities and users of the system.

Alissa Huntoon,

Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 2011–16326 Filed 6–28–11; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 29, 2011. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit

level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Grain Inspection, Packers, and Stockyards Administration (N1–545–08–7, 7 items, 7 temporary items). Records of the Health and Safety division, including case files of investigations relating to maintaining a safe work environment; policy directives; evacuation plans; material safety data sheets; reports on pollution control and hazardous waste; and agreements with outside organizations to provide counseling services. Also included are case files of investigations on incidents of workplace violence.

2. Department of Agriculture, Grain Inspection, Packers, and Stockyards Administration (N1–545–11–5, 1 item, 1 temporary item). Master files of an electronic system used to manage and track agency workflow and store the data related to these activities.

3. Department of Health and Human Services, Administration on Aging (N1–439–09–5, 13 items, 11 temporary items). Master data files of the agency's internal and external Web sites; master data files of an electronic system containing bibliographic information on grant products; and records relating to managing the agency's Web sites. Proposed as permanent are statistical reports and master files of an electronic system containing statistical information on the elderly population.

4. Department of Health and Human Services, Indian Health Service (N1–513–11–1, 3 items, 3 temporary items.) Records consisting of case files documenting tuition loan repayment for agency employees.

5. Department of Homeland Security, Transportation Security Administration (N1–560–11–3, 2 items, 2 temporary items). Applications, certifications, and waivers related to authorizing exemption of qualified retired law enforcement officers from most state laws prohibiting the carrying of concealed firearms.

6. Department of Homeland Security, U. S. Secret Service (N1–087–11–2, 1 item, 1 temporary item). Master file of an electronic information system containing information on subjects of interest for possible investigations of criminal activity.

7. Department of Justice, Federal Bureau of Investigation (N1–65–10–3, 1 item, 1 temporary item). Master file of an electronic information system which creates and maintains employee credentials.

8. Department of Justice, Federal Bureau of Investigation (N1–65–10–6, 7 items, 7 temporary items). Master file, outputs, and related records of an electronic information system used to manage and track the translation process.

9. Department of Justice, Justice Management Division (DAA–0060–2011–0007, 1 item, 1 temporary item). Files maintained for review of conversions of political appointees to career positions to ensure compliance with applicable laws.

10. Department of State, Bureau of Diplomatic Security (N1–59–11–15, 1 item, 1 temporary item). Chronological files of the Office of the Executive Director, including copies of administrative records, correspondence, and interagency agreements. Recordkeeping copies of these files are maintained by other offices.

11. National Aeronautics and Space Administration, Agency-wide (N1–255–10–6, 5 items, 5 temporary items). Records relating to health care provider quality assurance, including medical investigation reports, health professional credentialing records, and other routine administrative records.

12. Securities and Exchange Commission, Office of Public Affairs (N1–266–10–1, 6 items, 4 temporary items). Records include e-mail releases of public information, microblog submissions and documentation, and media advisories of teleconferences. Proposed for permanent retention are press releases and daily digests of news and events.

Dated: June 23, 2011.

Sharon G. Thibodeau

Deputy Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2011–16447 Filed 6–28–11; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on July 12, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, July 12, 2011—8:30 a.m. until 12 p.m.

The Subcommittee will review the Supplemental Safety Evaluation Report, Supplement 23 (SSER23) associated with the staff's review of the Watts Bar Nuclear Plant, Unit 2 Operating License application. The Subcommittee will hear presentations by and hold discussions the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or *E-mail: Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Jessie Delgado (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: June 22, 2011.

Yoira Diaz-Sanabria,

Senior Program Manager, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–16263 Filed 6–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on July 28, 2011, Atlanta Marriott, 265 Peachtree Center, Room M301, Atlanta, GA 30303.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, July 28, 2011—8:30 a.m. thru 5 p.m.

The Subcommittee will meet with Region II to discuss the construction inspection program at the Vogtle site and discuss other items of mutual interest. The Subcommittee will hear presentations by and hold discussions the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Ilka Berrios (Telephone 301–415–3179 or E-mail: *Ilka.Berrios@nrc.gov*) by July 22, 2011, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Ms. Denis Edwards (Telephone 404–997–4432) to be escorted to the meeting room.

Dated: June 22, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–16268 Filed 6–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on July 12, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, July 12, 2011—12 p.m. until 1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee. Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Ilka Berrios (Telephone 301–415–3179 or *E-mail: Ilka.Berrios@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Ms. Jessie Delgado (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: June 22, 2011.

Yoira Diaz-Sanabria,

Senior Program Manager, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–16265 Filed 6–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0275]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Revision 1 of Regulatory Guide (RG) 1.179, ''Standard Format

and Content of License Termination Plans for Nuclear Power Reactors.''

FOR FURTHER INFORMATION CONTACT: James C. Shepherd, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–6712 or e-mail *James.Shepherd@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.179, ''Standard Format and Content of License Termination Plans for Nuclear Power Reactors,'' was issued with a temporary identification as Draft Regulatory Guide, DG–1228. This guide provides general procedures for the preparation of license termination plans for nuclear power reactors. Use of this regulatory guide will help to ensure the completeness of the information provided in a license termination plan, assist the staff of the NRC and others in locating pertinent information, and facilitate the review process. However, the NRC does not require conformance with the procedures, which are provided for guidance only.

II. Further Information

In August 2010, DG–1228 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on October 11, 2010, no comments were received. Electronic copies of Regulatory Guide 1.179, Revision 1 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/* and through the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* under Accession No. ML110490419. The regulatory analysis may be found in ADAMS under Accession No. ML110490425.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resources@nrc.gov.*

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

Dated at Rockville, Maryland, this 17th day of June, 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

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

[FR Doc. 2011–16270 Filed 6–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0321]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Revision 2 of Regulatory Guide 1.107, ''Qualification for Cement Grouting for Prestressing Tendons in Containment Structures.''

FOR FURTHER INFORMATION CONTACT: Mekonen M. Bayssie, 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 or Commission) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide (RG) 1.107 entitled, ''Qualification for Cement Grouting for Prestressing Tendons in Containment Structures,'' was issued with a temporary identification as Draft Regulatory Guide, DG–1196.

This guide describes a method that the staff of the U.S. Nuclear Regulatory Commission considers acceptable for the use of Portland cement grout as the corrosion inhibitor for prestressing tendons in prestressed concrete containment structures. This guide also provides quality standards for using Portland Cement grout to protect prestressing steel from corrosion.

The prestressing tendon system of a prestressed concrete containment structure is a principal strength element of the structure. The ability of the containment structure to withstand the events postulated to occur during the life of the structure depends on the functional reliability of the structure's principal strength elements. Thus, any significant deterioration of the prestressing elements caused by corrosion may present a potential risk to public safety. It is important that any system for inhibiting the corrosion of prestressing elements must possess a high degree of reliability in performing its intended function.

II. Further Information

In October 2010, DG–1196 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on December 11, 2010. Electronic copies of Regulatory Guide 1.107, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/* and through the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* under Accession No. ML110550732. The Regulatory Analysis may be found in ADAMS under Accession No. ML110550743. Staff's responses to public comments on DG–1196 are available under ML110590058.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at 301–415–4737 or 800–397–4209, by fax at 301–415–3548, and by e-mail to *pdr.resources@nrc.gov.*

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

Dated at Rockville, Maryland, this 17th day of June, 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

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

[FR Doc. 2011–16273 Filed 6–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0132]

Report to Congress on Abnormal Occurrences; Fiscal Year 2010; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438) defines an abnormal occurrence (AO) as an unscheduled incident or event that the U.S. Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–68) requires that AOs be reported to Congress annually. During fiscal year 2010, fifteen events that occurred at facilities licensed or otherwise regulated by the NRC and/or Agreement States were determined to be AOs.

This report describes eight events at NRC-licensed facilities. The first event involved radiation exposure to an embryo/fetus. The other seven events occurred at NRC-licensed or regulated medical institutions and are medical events as defined in Title 10, Part 35, of the *Code of Federal Regulations* (10 CFR part 35). The report also describes seven events at Agreement State-licensed facilities. Agreement States are the 37 States that currently have entered into formal agreements with the NRC pursuant to Section 274 of the Atomic Energy Act (AEA) to regulate certain quantities of AEA-licensed material at facilities located within their borders. The first two Agreement State-licensee events involved radiation exposure to an embryo/fetus. The other five Agreement State-licensee events were medical events as defined in 10 CFR part 35 and occurred at medical institutions. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the actions taken to prevent recurrence. Each event is also being described in NUREG–0090, Vol. 33, ''Report to Congress on Abnormal Occurrences: Fiscal Year 2010.'' This report is available electronically at the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*.

Three major categories of events are reported in this document—I. For All Licensees, II. For Commercial Nuclear Power Plant Licensees, and III. Events at Facilities Other Than Nuclear Power Plants and All Transportation Events. The full report, which is available on the NRC Web site, provides the specific criteria for determining when an event is an AO. It also discusses ''Other Events of Interest,'' which does not meet the AO criteria but has been determined by the Commission to be included in the report. The event identification number begins with ''AS'' for Agreement State AO events and ''NRC'' for NRC AO events.

I. For All Licensees

A. Human Exposure to Radiation From Licensed Material

During this reporting period, one event at an NRC-licensed or regulated facility and two events at Agreement State-licensed facilities were significant enough to be reported as AOs. Although these events occurred at medical facilities, they involved unintended exposures to individuals who were not patients. Therefore, these events belong under the criteria I.A, ''For All Licensees'' category as opposed to the criteria III.C, ''For Medical Licensees'' category.

AS10–01 Human Exposure to Radiation at Mohamed Megahy MD, Ltd in Maryville, Illinois

Date and Place—May 1, 2007 (reported on June 17, 2010), Maryville, Illinois.

Nature and Probable Consequences—Mohamed Megahy MD, Ltd (the licensee) indicated that on May 1, 2007, a patient was given 3,807 MBq (102.9 mCi) of iodine-131 as a treatment for the recurrence of thyroid cancer. On June 11, 2007, the licensee was contacted by the patient's obstetrician/gynecologist (OB/GYN) who advised them that the patient was 25–27 weeks (6 months) pregnant at the time of the iodine-131 administration. At the time of administration, the patient indicated to the licensee that she was not pregnant, and the licensee did not perform an independent test.

In June 2010, the Illinois Emergency Management Agency was contacted by the licensee and requested to make a dose estimate to a fetus as a result of administration of iodine-131 to a patient who was later found to be pregnant. When the Illinois Emergency Management Agency requested additional information to determine the appropriate parameters of the event, the licensee advised the Illinois Emergency Management Agency that the administration had occurred 3 years earlier. The Illinois Emergency Management Agency calculated an estimated dose to the fetus of 860 mSv (86 rem) and the fetal thyroid of over 1,000,000 mSv (100,000 rem). A full-term child was subsequently born in August 2007 without a thyroid. The child was immediately placed on replacement hormone therapy and continues such treatment.

Cause(s)—The cause of the event was found to be a combination of miscommunication and failure of the licensee to conduct an independent confirmatory pregnancy test.

Actions Taken To Prevent Recurrence

Licensee—The licensee has subsequently made procedural changes to the interview process for screening patients for iodine-131 treatment. This policy includes a confirmatory negative pregnancy test. In addition, the licensee identified the significant delay in reporting the event to the Illinois Emergency Management Agency as not knowing the reporting requirement for this type of event.

State—The Illinois Emergency Management Agency conducted an investigation of the event and issued a Notice of Violation (NOV) for the licensee's failure to report the event. The Illinois Emergency Management Agency is considering rulemaking to require the performance of testing to determine pregnancy prior to administration of iodine-131.

AS10–02 Human Exposure to Radiation at Mercy Medical Center in Durango, Colorado

Date and Place—March 16, 2010, Durango, Colorado.

Nature and Probable Consequences—Mercy Medical Center (the licensee) reported that a therapeutic dose of 1,110 MBq (30 mCi) of iodine-131 for hyperthyroidism resulted in a dose to an embryo of 80 mGy (8 rem) whole body. Prior to the treatment, the patient informed the licensee's staff that she was not pregnant and the licensee's staff administered a pregnancy test as a routine precaution. The pregnancy test yielded a negative result. Based on the negative pregnancy test results and the patient's interview responses, the licensee administered iodine-131 to the patient.

On April 26, 2010, the patient performed a home pregnancy test that resulted in a positive test result. The patient's pregnancy was confirmed with a positive blood serum pregnancy test on April 27, 2010. The patient's OB/GYN estimated that conception

occurred on March 13, 2010 (about 1 week pregnant at the time of administration). A consulting medical physicist reviewed the case and estimated the embryonic exposure (whole body) at 53 to 92 mGy (5.3 to 9.2 rem). The possibility of embryonic thyroid exposure was also investigated and determined to be insignificant due to the early stage of embryonic development. At this dose and administration time in relation to the embryonic development (blastogenesis), the licensee determined that no adverse impact will be likely on subsequent embryonic or fetal development and that subsequent health risks were unlikely. The patient was informed of the dose estimates and potential risks and she elected to continue the pregnancy.

Cause(s)—The cause of this event was the close proximity of conception, which resulted in a negative pregnancy test, to the administration of the iodine-131.

Actions Taken To Prevent Recurrence

Licensee—To help prevent recurrence, the licensee added additional questions to the screening process to help identify patients that might be pregnant even though all procedures to prevent this occurrence were followed.

State—The State conducted an investigation and concurs with the licensee that a reasonable standard of care was met and, consequently, no enforcement action is warranted.

NRC10–01 Human Exposure to Radiation at Tripler Army Medical Center in Honolulu, Hawaii

Date and Place—June 7, 2010, Honolulu, Hawaii.

Nature and Probable Consequences—Tripler Army Medical Center (TAMC) (the licensee) reported that a female patient underwent a therapeutic administration of iodine-131 for thyroid ablation therapy. Prior to the treatment, the patient informed the licensee's staff that she was not pregnant and the licensee's staff administered a pregnancy test as a routine precaution. The pregnancy test yielded a negative result. Based on the negative pregnancy test results and the patient's interview responses, the licensee administered iodine-131 to the patient.

On July 8, 2010, the patient became aware that she was pregnant and informed the licensee and her physician. On August 3, 2010, an ultrasound was performed on the patient and a determination was made that the actual date of conception was June 1, 2010 (about 1 week pregnant at time of administration). The TAMC radiation safety officer (RSO) estimated the embryonic dose to be 41.27 cGy (41.27 rad) and concluded that the exposure of the embryo in the first 2 weeks following conception is not likely to result in malformation or embryo/fetal death despite the fact that the central nervous system and the heart are beginning to develop in the third week. The NRC contracted with a medical consultant to perform an independent medical evaluation of this embryo/fetal overexposure event. The consultant's report agreed with the TAMC conclusions with the exception that the medical consultant did not want to rule out the chance of embryo/fetal malformation.

Cause(s)—The cause of this event was the close proximity of conception, which resulted in a negative pregnancy test, to the administration of the iodine-131.

Actions Taken To Prevent Recurrence

Licensee—The patient consent form has been updated to reflect that the pregnancy test may not show a positive result until the embryo has implanted, which may not occur until 7–10 days after conception. In future consultations, the clinic plans to ask the patient to refrain from any action that may lead to pregnancy during the period immediately prior to therapeutic radioisotope administration.

NRC—The NRC conducted an inspection on October 13–14, 2010, and concluded there were no violations of NRC requirements associated with this event.

II. Commercial Nuclear Power Plant Licensees

During this reporting period, no events at commercial nuclear power plants in the United States were significant enough to be reported as AOs.

III. Events at Facilities Other Than Nuclear Power Plants and All Transportation Events

C. Medical Licensees

During this reporting period, seven events at NRC-licensed or regulated facilities and five events at Agreement State-licensed facilities were significant enough to be reported as AOs.

AS10–03 Medical Event at Mercy St. Vincent Medical Center in Toledo, Ohio

Date and Place—November 8, 2005 (reported on March 3, 2010), Toledo, Ohio.

Nature and Probable Consequences—Mercy St. Vincent Medical Center (the licensee) reported that a medical event occurred associated with a brachytherapy seed implant procedure to treat prostate cancer. The patient was prescribed to receive a total dose of 160 Gy (16,000 rad) to the prostate using 67 iodine-125 seeds. Instead, the patient's sigmoid colon received at least the full prescription dose of 160 Gy (16,000 rad) and a significant portion of the bladder base including the region of the urethral orifices received at least 108 Gy (10,800 rad) (wrong treatment sites). The patient and referring physician were informed of this event.

On March 3, 2010, the Ohio Department of Health (ODH) performed an inspection of the licensee and noted that the licensee had not reported this medical event to the State and the NRC. The licensee had not identified the medical event as a reportable event and did not investigate it to determine a cause. Subsequently, the licensee reported the medical event to the NRC. The licensee confirmed that 13 of the permanent iodine-125 seeds were improperly positioned in the bladder and subsequently removed from the patient's bladder immediately after the procedure. A post-implant dose calculation showed that the prostate received a dose of 15.43 Gy (1,543 rad), or 9.6 percent of the prescribed dose. The patient chose to then receive an external beam treatment with a linear accelerator to treat the tumor. About 13 months after the brachytherapy procedure, the patient developed rectosigmoid bleeding that required hospitalization and argon laser coagulopathy. In August 2010, ODH ordered an independent medical expert evaluation of the event. The independent medical expert concluded that the subsequent delivery of external beam radiotherapy may have contributed to the rectosigmoid damage, but the high dose from the brachytherapy procedure almost certainly was the primary cause of the damage.

Cause(s)—The cause of the medical event was the failure of the licensee to adequately visualize the prostate prior to the implant procedure.

Actions Taken To Prevent Recurrence

Licensee—Corrective actions taken by the licensee included training of the RSO, medical physicist, clinical director, and radiation oncologists on ODH regulations concerning medical events. New procedures were also developed for brachytherapy seed implant procedures.

State—In March 2010, ODH conducted a special inspection of the licensee and issued an NOV. The NOV required the licensee to perform a self

audit of all brachytherapy cases performed since November 2004, which revealed seven additional medical events that were not reported. In June 2010, an Adjudication Order and administrative penalty of $25,000 were issued to the licensee.

NRC10–02 Medical Event at Chippenham & Johnston-Willis Medical Center in Richmond, Virginia

Date and Place—December 16, 2008, Richmond, Virginia.

Nature and Probable Consequences—Chippenham & Johnston-Willis (CJW) Medical Center (the licensee) reported a medical event with its gamma stereotactic radiosurgery (GSR) unit. A patient being treated for trigeminal neuralgia (inflammation of the nerve) was prescribed a treatment of 40 Gy (4,000 rad) to the right trigeminal nerve but received the treatment dose to the left trigeminal nerve (wrong treatment site). The patient and referring physician were informed of this event.

The licensee noted that on the day of the treatment, the top portion of the written directive correctly documented the prescribed treatment site; however, while the staff was preparing the daily patient treatment log, it was inadvertently annotated that the dose was to be delivered to the left trigeminal nerve. This error was carried through by the medical physicist during preparation of the patient's treatment plan and completion of the bottom part of the written directive. Upon completion of the procedure and after reviewing the patient's file, the treatment team identified the inadvertent treatment of the left trigeminal nerve. The NRC contracted medical consultant concluded that although no actual consequences resulted, an unlikely injury to the brain stem was possible due to high radiation dose to a tiny volume of the brain stem tissue and an increased risk of cataract formation.

Cause(s)—The cause of the medical event was the licensee's failure to have adequate procedures that verify the location of treatment sites and ensure that any inconsistencies in the written directives are resolved prior to administration.

Actions Taken To Prevent Recurrence

Licensee—The licensee revised their GSR treatment procedures to affirm that (1) a ''Physician Order'' will be the primary source of documentation of the treatment site and will accompany the patient through the entire course of the treatment, (2) the radiation oncologist and the neurosurgeon will independently verify and document the treatment site, (3) the nurse and the medical physicist will confirm that the treatment site identified by the radiation oncologist in the written directive and the neurosurgeon's ''physician order'' both match, (4) the neurosurgeon will mark the treatment site with ink in the presence of a nurse, and (5) a ''Time-Out'' process involving independent verification of the final treatment plan by each of the four members of the clinical team (who are required to sign-off their presence and acceptance of time-out in the presence of the patient before moving ahead with the treatment) will be used with the patient or the patient's authorized representative to confirm the treatment site.

NRC—The NRC initiated an inspection on December 18, 2008. The NRC completed the inspection on November 30, 2009, and issued one Severity Level III violation to the licensee on January 21, 2010.

NRC10–03 Medical Event at Virtua Health System in Marlton, New Jersey

Date and Place—January 19, 2009, Marlton, New Jersey.

Nature and Probable Consequences—Virtua Health System (the licensee) reported that a medical event occurred associated with a brachytherapy seed implant procedure to treat prostate cancer. The patient was prescribed to receive a total dose of 145 Gy (14,500 rad) to the prostate using 93 iodine-125 seeds. Instead, the patient received an approximate dose of 12.2 Gy (1,220 rad) to the rectum (wrong treatment site). The patient and referring physician were informed of this event.

On January 19, 2009, the urologist inserted needles in the patient's prostate gland under transrectal ultrasound guidance while the radiation oncologist left the operating room to obtain the radioactive seeds. The licensee's staff (including the authorized medical physicist [AMP]) questioned the accuracy of prostate visualization prior to implantation of the seeds but took no action to resolve the question. On February 23, 2009, following a post-implant computed tomography (CT) scan, it was noted that some mispositioning of the sources occurred and the patient was notified that additional treatment may be necessary. On March 19, 2009, the AMP reviewed the case and determined that 100 percent of the seeds were implanted outside of the prostate, which received about 10 Gy (1,000 rad). The NRC contracted with a medical consultant who concluded that although the probability of long-lasting negative health effects to the patient is low, an increased risk of impotency and fibrosis was possible due to the high radiation dose.

Cause(s)—The cause of the medical event was failure of the medical implant team to adequately visualize and identify the prostate prior to the implant.

Actions Taken To Prevent Recurrence

Licensee—The licensee revised its policy and procedures to require that (1) all members of the implant team be present before the patient is brought to the operating room and placed under anesthesia, (2) the AMP be included in the pre-implantation ultrasound, (3) the authorized user consult with the urologist before needle insertion, (4) both the radiation oncologist and the urologist agree on the positioning and the visualizing of the target anatomy, (5) any objection or question by an implant team member is cause for stopping the implant and performing a review, and 6) the implant be stopped if there are any ultrasound image questions. The licensee's staff was also trained on the revised procedures, the definition and reporting requirements of a medical event, and the communication of any CT scan abnormalities or seed misplacement to the RSO.

NRC—The NRC initiated an inspection on March 20, 2009. The NRC completed the inspection on August 26, 2009, and issued one Severity Level III violation to the licensee on October 21, 2009.

NRC10–04 Medical Event at Nanticoke Memorial Hospital, Seaford, Delaware

Date and Place—March 5, 2009 (reported on July 15, 2009), Seaford, Delaware.

Nature and Probable Consequences—Nanticoke Memorial Hospital (the licensee) reported that a medical event occurred involving a brachytherapy seed implant procedure to treat prostate cancer. The patient was prescribed a total dose of 145 Gy (14,500 rad) to the prostate using 61 iodine-125 seeds. Instead, the patient received an approximate prostate dose of 26 Gy (2,600 rad) (18 percent of the prescribed dose) and a dose of 139 Gy (13,900 rad) to unintended tissue (wrong treatment site). The patient and referring physician were informed of this event.

The seeds were implanted under ultrasound guidance using an axial view; however, following the implant, the urologist performed a cystoscopy to remove 22 of the seeds from the bladder. When the patient returned to the hospital for a post-implant CT scan, the images revealed that 32 seeds were displaced superiorly to the prostate and 7 seeds were implanted in the prostate.

The NRC contracted with a medical consultant who concluded that no significant adverse health effects to the patient were expected.

Cause(s)—The cause of the medical event was due to a miscalculation of the prostate depth in relation to the skin surface due to possible patient movement during the procedure.

Actions Taken To Prevent Recurrence

Licensee—The licensee revised its prostate implant procedure to include the use of both the axial and sagittal views of an ultrasound probe to determine prostate depth. In addition, the licensee revised its medical event policy to ensure timely reporting of medical events and to clearly state the parameters under which a medical event must be reported. The licensee provided training on the revised policies and procedures to its staff.

NRC—The NRC initiated an inspection on July 19, 2009. The NRC completed the inspection on January 6, 2010, and issued one Severity Level III violation to the licensee on February 2, 2010.

AS10–04 Medical Event at Hoag Memorial Hospital Presbyterian in Newport Beach, California

Date and Place—March 20, 2009, Newport Beach, California.

Nature and Probable Consequences—Hoag Memorial Hospital Presbyterian (the licensee) reported that a medical event occurred associated with its GSR unit. A patient being treated for an acoustic neuroma was scheduled to receive between 11 and 18 Gy (1,100 and 1,800 rads) to an intended neuroma volume of 0.08 cm^3 but, due to an unintended shift in the treatment volume of about 2 mm, only about one-half of the neuroma received the treatment dose and an adjacent temporal bone volume of 0.04 cm^3 received the treatment dose (wrong treatment site). The other half of the neuroma received between 3 and 11 Gy (300 and 1,100 rads). The patient and physician were informed of this event.

The unintended shift in treatment volume occurred due to a misaligned fiduciary marker (indicator) box during a CT scan used in the treatment planning process. The misalignment occurred because one alignment pin of four on the indicator box was not fully seated in the stereotactic frame attached to the patient's head, resulting in the indicator box not being correctly aligned. The alignment pin error was not detected until the conclusion of the treatment. The additional dose to the temporal bone because of the alignment error is not expected to result in any significant adverse health effect to the patient.

Cause(s)—The medical event is believed to have been caused by human error in not ensuring the CT indicator box was properly installed at the time of the CT scan. It is not known if the improper installation occurred when the technologist positioned the indicator box in the stereotactic frame or whether the indicator box became misaligned during patient positioning in preparation for the CT scan.

Actions Taken To Prevent Recurrence

Licensee—The licensee has retrained all CT technologists concerning the proper placement of the CT indicator box. Also, because use of CT imaging for GSR treatment is infrequent (normally MRI is used), the licensee now requires that a GSR qualified medical physicist verify the placement of the CT indicator box immediately prior to all CT imaging that will be used for GSR treatment planning.

State—On June 22, 2009, the California Department of Public Health (CDPH) issued an NOV related to this event. Subsequently, CDPH received dosimetry information which they used to interpret the event as not meeting the AO criteria; however, CDPH was not certain of this determination and asked the NRC for a final determination. On July 1, 2010, after the NRC Medical Radiation Safety Team (MSRT) had performed a careful analysis of the event along with the dosimetry data, the NRC determined that the event met the AO criteria.

AS10–05 Medical Event at Marshfield Clinic in Marshfield, Wisconsin

Date and Place—June 2005 to May 2007, (reported on July 8, 2010) Marshfield, Wisconsin.

Nature and Probable Consequences—In July 2010, the Marshfield Clinic (the licensee) reviewed all prostate brachytherapy cases performed under its license in the past 7 years. The review resulted in the identification of nine medical events involving permanent implants of iodine-125 for prostate brachytherapy where the total dose delivered differed from the prescribed dose by 20 percent or more, or another organ received at least 50 percent more dose than intended. The three medical events involved planned doses to the prostate of 120 Gy (12,000 rad), 160 Gy (16,000 rad), and 160 Gy (16,000 rad). The licensee assumes an identical planned dose to the urethra. However, these treatments resulted in actual doses to the urethra of 191.6 Gy (19,160 rad), 258.1 Gy (25,810 rad), and 242.6 Gy (24,260 rad), which were overdoses of 59.7, 61.3, and 51.6 percent, respectively. The licensee notified the affected patients and referring physicians.

The authorized user physicians had previously determined that patients would not suffer significant health effects for urethral doses below 400 Gy (40,000 rad). Because the urethra penetrates through the center of the prostate and the prostate itself is a small gland, a balance exists between reducing the dose to the urethra and delivering the prescribed dose to the prostate. The doses delivered to the patients in question were well within the 400 Gy (40,000 rad) urethral tolerance dose, and the licensee considered the treatments to be clinically acceptable.

Cause(s)—The licensee suspects that the implants deviated from their intended tracks after insertion into the prostate, causing the seeds to be deposited closer to the urethra.

Actions Taken To Prevent Recurrence

Licensee—Corrective actions included developing a procedure for ensuring that treatments were delivered in accordance with the written directive, planning treatments to D90 (minimum dose received by 90 percent of CT-defined prostate volume) values of 100–110 percent, using the same written directive form at each site that performs brachytherapy, increasing ultrasound and fluoroscopy visualization during prostate implants and providing additional training to personnel.

State—The Wisconsin Department of Health Services determined that Marshfield Clinic did not have a procedure for evaluating whether the dose delivered in a prostate brachytherapy treatment was in accordance with the written directive. In addition, the licensee did not have criteria for identifying a medical event for prostate brachytherapy. The licensee has been cited for several items of noncompliance.

NRC10–05 Medical Event at Yale New-Haven Hospital, New Haven, Connecticut

Date and Place—August 5, 2009, New Haven, Connecticut.

Nature and Probable Consequences—Yale New-Haven Hospital (the licensee) reported that a medical event occurred associated with its GSR unit. A patient being treated for brain metastases was prescribed 18 Gy (1,800 rad). However, while treating a patient earlier in the day, an equipment malfunction occurred with the GSR unit that resulted in a positioning shift of the x-axis by 4.5 mm. The positioning shift in the x-axis

resulted in an underdose to the treatment site and an overdose to a wrong treatment site. The patient and physician were informed of this event.

The malfunction occurred following the treatment of the first patient on August 5, 2009. The automatic positioning system (APS) malfunctioned and, after discussion with the GSR manufacturer, the position error codes were cleared by the AMP. A second patient was treated for multiple brain metastases later that day. The GSR service personnel noted on August 5, 2009, that the APS positioning was off by about 5 mm. After further evaluation, the manufacturer determined that a position shift (offset) occurred when licensee personnel accepted an error message concerning position deviation. The NRC contracted with a medical consultant who concluded that no clinically significant side effects from radiation damage to the wrong treatment sites would be expected.

Cause(s)—The cause of the medical event was failure of licensee personnel to verify that the APS coordinates were in accordance with the written directive.

Actions Taken To Prevent Recurrence

Licensee—The licensee issued a memorandum to all personnel involved in GSR treatments to require visual verification of the physical coordinates against the electronic coordinates before the start and at the end of each treatment run. The licensee also retrained all GSR personnel on the importance of fully understanding error conditions and reviewing unexpected errors with other staff involved in the treatment (e.g., radiation oncologist, AMP, etc.) prior to clearing any unexpected error.

NRC—The NRC initiated an inspection on August 13, 2009. The NRC completed the inspection on April 7, 2010, and issued one Severity Level III violation to the licensee on May 21, 2010.

NRC10–06 Medical Event at Valley Hospital in Paramus, New Jersey

Date and Place—July 29, 2009, Paramus, New Jersey.

Nature and Probable Consequences—Valley Hospital (the licensee) reported that a medical event occurred associated with a brachytherapy seed implant procedure to treat prostate cancer. The patient was prescribed a total dose of 65 Gy (6,500 rad) to the prostate using 46 cesium-131 seeds. Instead, the licensee determined that an unintended volume (30.1 ml) of soft tissue received 100 percent of the prescribed prostate dose. The patient and referring physician were informed of this event.

On August 6, 2009, the patient returned to the hospital for a post-implant CT scan. The images revealed that the seeds were implanted in soft tissue 4 to 5 cm from the prostate. Post-implant dosimetry calculations indicated that none of the prostate received the prescribed dose of 6,500 cGy (6,500 rad). The NRC contracted with a medical consultant who concluded that the additional dose can increase the risk of soft tissue fibrosis or increase the risk of impotency.

Cause(s)—The cause of the medical event was the licensee's failure to identify the position of the prostate due to the patient's unusual anatomy and obesity.

Actions Taken To Prevent Recurrence

Licensee—The licensee revised their prostate implant procedures to include steps to ensure that the prostate and surrounding anatomy is adequately visualized prior to implant.

NRC—The NRC initiated an inspection on August 13, 2009. The NRC completed the inspection on October 29, 2009, and determined that no violations of NRC requirements occurred.

NRC10–07 Medical Event at Christiana Care Health Center in Wilmington, Delaware

Date and Place—January 18, 2010, Wilmington, Delaware.

Nature and Probable Consequences—Christiana Care Heath Center (the licensee) reported that a patient was prescribed a high dose-rate (HDR) mammosite (brachytherapy) multi-lumen catheter treatment of 34 Gy (3,400 rad) over a 5-day period to the left breast. The patient received an average dose of 17 Gy (1,700 rad) to 100 cm^3 of unintended breast tissue; 68 Gy (6,800 rad) to 7.5 cm^3 of unintended skin and underlying tissue; and 3.4 Gy (340 rad) to 35 cm^3 of intended breast tissue. The patient and referring physician were informed of this event.

On February 22, 2010, during a follow-up examination, the patient complained about skin reddening on the external breast. In reviewing the treatment plan, it was discovered that the AMP performed measurements using a source position simulator (SPS) measurement tool following a CT scan to determine the treatment distance for each catheter. The catheter distances were recorded and confirmed with two manufacturer representatives that were present at the time of the treatment. However, it was noted that an incorrect measurement caused the placement of the radioactive source 10 cm proximal to the intended position. The NRC contracted medical consultant concluded that the dose that was administered to the unintended left breast tissue is unlikely to result in any significant or unusual adverse effect. However, a significant risk exists that local tumor recurrence could occur if additional intervention is not performed.

Cause(s)—The cause of the medical event was human error in the failure to identify that the measurement tool was functioning improperly and to identify an incorrect measurement distance.

Actions Taken To Prevent Recurrence

Licensee—The licensee revised its procedures for HDR brachytherapy to require a double-check of all patient measurements, a daily and monthly quality assurance requirement to confirm that the SPS tool is functioning properly, and a process to ensure that all members of the treatment team agree on the specifics of the treatment. In addition, the licensee acquired a new SPS tool, developed and posted a reference table at the HDR control console, provided training on revised procedures to staff involved in the HDR program (to be repeated annually), and implemented a ''New Product'' committee to review all new product plans.

NRC—The NRC conducted an inspection on July 12, 2010, and issued one Severity Level III violation to the licensee on August 24, 2010.

AS10–06 Medical Event at Mary Bird Perkins Cancer Center in Baton Rouge, Louisiana

Date and Place—March 15, 2010, Baton Rouge, Louisiana.

Nature and Probable Consequences—Mary Bird Perkins Cancer Center (the licensee) reported that a medical event occurred associated with a brachytherapy seed implant procedure to treat prostate cancer. The patient was prescribed a total dose of 145 Gy (14,500 rad) to the prostate using iodine-125 seeds. Instead, the patient received a dose of 39.55 Gy (3,955 rad) to the rectum, 40.94 Gy (4,094 rad) to the urethra, and 6 Gy (600 rad) to the bladder (wrong treatment sites). The patient and referring physician were informed of this event.

During the review of this event, the licensee determined that a positioning error occurred and the dose was delivered about 3.0 cm away from the targeted prostate gland. The estimated dose to the prostate gland was 12.88 Gy (1,288 rad). The licensee concluded that

no significant adverse health effect to the patient is expected.

Actions Taken To Prevent Recurrence

Licensee—The licensee modified its procedure to insert the needles that hold the prostate in place prior to obtaining the ultrasound images instead of immediately before the seed needles are inserted. In addition, the sagittal image will be captured at the time of planning image acquisition and confirmed periodically throughout the case, and the radiation oncologist will personally confirm the location of the reference base prior to dispensing the first seed.

State—The Louisiana Department of Environmental Quality conducted an investigation, reviewed the licensee's corrective actions, and found the corrective actions to be adequate.

AS10–07 Medical Event at Mayo Clinic in Rochester, Minnesota

Date and Place—March 23, 2010, Rochester, Minnesota.

Nature and Probable Consequences—The Mayo Clinic (the licensee) reported a medical event associated with an HDR biliary treatment for liver carcinoma containing 329 GBq (8.9 Ci) of iridium-192. A patient was prescribed to receive four fractionated doses totaling 16 Gy (1,600 rad) to the liver. The treatment to the liver should have produced an estimated dose to the duodenum (wrong treatment site) of 1.2 Gy (120 rad) but as a result of the event it received a dose of about 10 Gy (1,000 rad). The patient and referring physician were informed of this event.

During the second fractioned treatment, the measurement cable was inserted into the catheter and it was noted that it extended about 17 cm beyond the programmed treatment distance used during the first fractioned treatment. It was concluded that the measurement wire on the first treatment had met with some resistance at a tight bend and that it was not at the end of the catheter. This resulted in overdosing the duodenum (wrong treatment site). Upon discovery of the treatment distance error and overdose, the licensee changed the written directive to add a fifth fractioned treatment to correct for the underdose of the liver. A lesser total dose to the liver was given because of concerns regarding the dose already received by the duodenum. The authorized user concluded that no chronic health effect to the patient is expected.

Cause(s)—The medical event was caused by human error in failing to verify that the correct catheter length was entered into the HDR unit.

Actions Taken To Prevent Recurrence

Licensee—The licensee committed to taking several corrective actions including the imaging of inserted catheters prior to treatments and performing catheter length checks prior to HDR treatments.

State—On April 6, 2010, the Minnesota Department of Health (MDH) staff performed a reactive inspection of the licensee's HDR program. The MDH approved the licensee's corrective actions and did not take enforcement action.

NRC10–08 Medical Event at Providence Hospital in Novi, Michigan

Date and Place—August 30, 2010, Novi, Michigan.

Nature and Probable Consequences—Providence Hospital (the licensee) reported that a medical event occurred associated with an anal brachytherapy treatment using 32 seeds containing iodine-125. The intended dose was 90 Gy (9,000 rad) to the tumor. Instead, the patient's seminal vesicle received 19.79 Gy (1,979 rad) more than intended and the bladder received 3.68 Gy (368 rad) more than intended. The patient and referring physician were informed of this event.

On September 1, 2010, a follow-up CT scan showed that the permanent implants had been inserted about 4 cm from the intended location. The licensee reported that the tumor near the anus and rectum received a maximum dose of 8 Gy (800 rad). The licensee calculated the dose difference to the surrounding tissue as a result of the improper permanent implant placement. The licensee concluded that no significant adverse health effect to the patient is expected.

Cause(s)—The licensee determined that the cause of the event was that they did not use tissue markers to confirm source placement and the insertion needle did not have a visible mark to ensure proper depth placement.

Actions Taken To Prevent Recurrence

Licensee—Procedures were modified to administer sources as prescribed in the written directive as follows: (1) Any interstitial procedure that requires the use of fluoroscopy alone will be done with the use of tissue markers to confirm source placement, and (2) interstitial procedures that use fluoroscopy alone will have needle depth verified. The licensee completed training of licensee staff on the event and the corrective actions by October 1, 2010.

NRC—The NRC's Region III staff reviewed and concurred on the licensee's corrective actions. The NRC has retained the services of an independent medical consultant to determine if any significant health effects to the patient are expected.

Dated at Rockville, Maryland, this 23rd day of June, 2011.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 2011–16266 Filed 6–28–11; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OMB–3420–0011; OPIC–115]

Submission for OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for approval.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval. {Comments were solicited in the 60 day notice, posted on [October 2, 2007], and no comments were received.}

DATES: This 30-day notice is to inform the public, that this collection is being submitted to OMB for approval.

ADDRESSES: Copies of the subject form may be obtained from the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Application for Financing.
Form Number: OPIC–115.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 9 hours per project.
Number of Responses: 190 per year.
Federal Cost: $12,754.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the soundness of the proposed project and the applicant's qualifications for receiving OPIC financial assistance and to assess the environmental impact and developmental effects of the project, and to measure the economic effects for the U.S. and the host country's economy.

Dated: June 23, 2011.

Nicole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2011–16161 Filed 6–28–11; 8:45 am]

BILLING CODE M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for approval.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval.

DATES: This 30-day notice is to inform the public, that this collection is being submitted to OMB for approval.

ADDRESSES: Copies of the subject form may be obtained from the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: New form.

Title: Short—Form Application for Political Risk Insurance.

Form Number: OPIC–247.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 2 hours per project.

Number of Responses: 50 per year.

Federal Cost: $5,000.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the document used by OPIC to determine the investor's and the project's eligibility for political risk insurance when used in conjunction with a completed application for OPIC financing.

Dated: June 23, 2011.

Nicole Cadiente

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2011–16155 Filed 6–28–11; 8:45 am]

BILLING CODE M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for approval.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval.

DATES: This 30-day notice is to inform the public, that this collection is being submitted to OMB for approval.

ADDRESSES: Copies of the subject form may be obtained from the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Extension, without change, of a currently approved collection.

Title: Self-Monitoring Questionnaire for Insurance and Finance Projects.

Form Number: OPIC 162.

Frequency of Use: One per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 4 hours per form.

Number of Responses: one per year.

Federal Cost: $0.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for political risk insurance, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for insurance underwriting analysis.

Dated: June 23, 2011.

Nicole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2011–16159 Filed 6–28–11; 8:45 am]

BILLING CODE M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission of OMB review; comments request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review, OPIC form 241, is summarized below.

DATES: Comments must be received within 30 calendar-days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Essie Bryant, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary of Form Under Review:

Type of Request: New Form.

Title: Enterprise Development Network (EDN) Loan/Insurance Originator Questionnaire.

Form Number: OPIC–241.

Frequency of Use: One per originator.

Type of Respondents: Business or other institution; individuals.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 4 hours per originator.

Number of Responses: 100 per year.

Federal Cost: $22,000.

Authority for Information Collection: Section 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 241 form is the principal document used by OPIC to determine the originator's eligibility for participation in OPIC's Enterprise Development Network, their involvement with the U.S. Government, and other information relevant to project origination.

Dated: June 23, 2011.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2011–16164 Filed 6–28–11; 8:45 am]

BILLING CODE M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Request for Comments

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form, OMB control number 3420–0001, under review is summarized below.

DATES: Comments must be received within 30 days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.

Title: Request for Registration for Political Risk Investment Insurance.

Form Number: OPIC–50.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: ½ hour per project.

Number of Responses: 247 per year.

Federal Cost: $2,841.00.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC Form 50 is submitted by eligible investors to register their intent to make international investments, and ultimately, to seek OPIC political risk insurance.

Dated: June 23, 2011.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2011–16166 Filed 6–28–11; 8:45 am]

BILLING CODE M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for approval.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval.

DATES: This 30-day notice is to inform the public, that this collection is being submitted to OMB for approval.

ADDRESSES: Copies of the subject form may be obtained from the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.

Title: Self-Monitoring Questionnaire.

Form Number: OPIC 162.

Frequency of Use: One per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 4 hours per form.

Number of Responses: one per year.

Federal Cost: $0.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for political risk insurance, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for insurance underwriting analysis.

Dated: June 23, 2011.

Nicole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2011–16167 Filed 6–28–11; 8:45 am]

BILLING CODE 3195–01–M

OPIC EXPEDITED SCREENING QUESTIONNAIRE DOWNSTREAM INVESTMENT FORM

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for approval from OMB.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval.

DATES: This 30-day notice is to inform the public, that this collection is being submitted to OMB for approval.

ADDRESSES: Copies of the subject form may be obtained from the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

SUMMARY FORM UNDER REVIEW:

Type of Request: Extension, without change, of a currently approved collection.

Title: Expedited Screening Questionnaire (ESQ)—Downstream Investments.

Form Number: OPIC 168A & B.

Frequency of Use: OPIC-supported financial intermediaries will complete Form 168A and 168B for each company in which they propose to invest. Form could be used by any given OPIC-supported financial intermediary between 3–4 times per year depending on the number investments the financial intermediary intends to consummate in a given year.

Type of Respondents: Business or other for-profit institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: One hour per project.

Number of Responses: 63 per year.

Federal Cost: $1,280.00 per year.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): Form 168A and 168B is the principal document used by OPIC to determine OPIC-supported financial intermediaries' compliance with OPIC economic, environmental, labor rights, and human rights policies.

Dated: June 23, 2011.

Nicole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2011–16158 Filed 6–28–11; 8:45 am]

BILLING CODE M

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, July 13, 2011, at 11 a.m.

PLACE: Commission hearing room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open part of the meeting will be audiocast. The audiocast can be accessed via the Commission's Web site at *http://www.prc.gov.*

MATTERS TO BE CONSIDERED: The agenda for the Commission's July 2011 meeting includes the items identified below.

Portions Open to the Public

1. Report on the Joint Periodicals Task Force and the report to the Congress pursuant to section 708 of the Postal Accountability and Enhancement Act (PAEA).
2. Report on legislative review pursuant to section 701 of the PAEA.
3. Report on status of pending dockets.
4. Review of postal-related Congressional activity.
5. Report on international activities.
6. Report on studies to quantify the social value of the postal system.

Portions Closed to the Public

7. Discussion of pending litigation.
8. Discussion of contractual matters involving sensitive business information—lease issues.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, at 202–789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary of the Commission, at 202–789–6800 or *shoshana.grove@prc.gov* (for inquiries related to meeting location, access for handicapped or disabled persons, the audiocast, or similar matters).

Dated: May 20, 2011.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–16436 Filed 6–27–11; 4:15 pm]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting; Board Votes To Close June 2, 2011, Meeting

By telephone vote on June 2, 2011, all members contacted and voting, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Board determined that no earlier public notice was possible.

Items Considered

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—discussion of prior agenda items and Board Governance.

General Counsel Certification:

The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

Contact Person for More Information:

Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2011–16522 Filed 6–27–11; 4:15 pm]

BILLING CODE 7710–12–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting; Board Votes to Close June 17, 2011, Meeting

By telephone vote on June 17, 2011, all members contacted and voting, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Dulles, Virginia, via teleconference. The Board determined that no earlier public notice was possible.

Items Considered

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—discussion of prior agenda items and Board Governance.

General Counsel Certification

The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

Contact Person for More Information

Requests for information about the meeting should be addressed to the

Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2011–16524 Filed 6–27–11; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64728; File No. SR–NYSEAmex–2011–39]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 17—NYSE Amex Equities To Codify Inbound Routing Functions Performed by Its Affiliate Broker-Dealer, Archipelago Securities LLC

June 23, 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 June 16, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Amex. 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 Rule 17—NYSE Amex Equities to codify inbound routing functions performed by its affiliate broker-dealer, Archipelago Securities LLC (''Arca Securities''). The text of the proposed rule change is available at the Exchange's principal office, at *http://www.nyse.com*, at the Commission's Public Reference Room, and at 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 17—NYSE Amex Equities to codify inbound routing functions performed by its affiliate broker-dealer, Arca Securities, which have previously been approved by the Commission.[3]

Background—Arca Securities Functions as Routing Broker

Arca Securities currently is the primary outbound and inbound routing broker for NYSE Amex. The outbound routing function for NYSE Amex is governed by Rules 13 and 17—NYSE Amex Equities.[4] These rules permit NYSE Amex to utilize Arca Securities to route orders to an away market center for execution whenever such routing is required by Exchange Rules and Federal securities laws.[5]

The inbound routing function of Arca Securities currently is governed by a pilot program established to permit Arca Securities to route orders from NYSE and NYSE Arca to NYSE Amex.[6] The pilot was extended and is currently scheduled to expire on September 30, 2011.[7] The terms of the inbound routing pilot are generally set forth in the Commission's approval orders, rather than rule text (except as noted below).[8] The terms of the pilots are as follows:

The Exchange and the Financial Industry Regulatory Authority (''FINRA'') have entered into a Rule 17d–2 agreement pursuant to which FINRA is allocated regulatory responsibilities to review Arca Securities' compliance with certain Exchange rules. The Exchange, however, retains ultimate responsibility for enforcing its rules with respect to Arca Securities.

NYSE Regulation monitors Arca Securities for compliance with the Exchange's trading rules and collects and maintains certain related information. Specifically, NYSE Regulation collects and maintains the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where Arca Securities is identified as a participant that has potentially violated Exchange or applicable SEC rules—in an easily accessible manner so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examination.

NYSE Regulation has agreed with the Exchange that it will provide a report to the Exchange's Chief Regulatory Officer, on a quarterly basis, that (i) Quantifies all alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated Exchange or SEC rules, and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated Exchange or Commission rules.

NYSE Euronext, as parent of the Exchange, was obligated to adopt a rule requiring it to establish and maintain procedures and internal controls reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange.[9]

Since the initiation of the inbound routing pilot in 2008, the Exchange in 2010 entered into a comprehensive

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's affiliates, New York Stock Exchange, LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca''), are proposing substantially similar rule changes. *See* SR–NYSE–2011–24 and SR–NYSEArca–2011–38.

[4] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63). Rules 13 and 17—NYSE Amex Equities permit not only Arca Securities but also unaffiliated third-party broker-dealers to perform the outbound routing function, which serves as a risk management function in the event of a system malfunction or failure. As such, Rule 17 currently refers generically to ''Routing Broker(s),'' rather than just Arca Securities.

[5] *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (SR–NYSEALTR–2008–07).

[6] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707, 57716 (October 3, 2008) (SR–Amex–2008–62). *See also* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63).

[7] *See* Securities Exchange Act Release Nos. 60751 (September 30, 2009), 74 FR 51630 (October 7, 2009) (SR–NYSEAmex–2009–67) (extending pilot from September 29, 2009 to December 31, 2009); 61269 (December 31, 2009), 75 FR 1097 (January 8, 2010) (SR–NYSEAmex–2009–91) (extending pilot from December 31, 2009 to March 31, 2010); 61815 (March 31, 2010), 75 FR 17813 (April 7, 2010) (SR–NYSEAmex–2010–32) (extending pilot from March 31, 2010 to September 30, 2010); 62831 (September 2, 2010), 75 FR 55388 (September 10, 2010) (SR–NYSEAmex–2010–91) (extending pilot from September 30, 2010 to March 31, 2011); and 64014 (March 2, 2011), 76 FR 12733 (March 8, 2011) (SR–NYSEAmex–2011–10) (extending pilot from March 31, 2011 to September 30, 2011).

[8] *See supra* note 4.

[9] *See supra* note 4. *See also* Rule 2B—NYSE Amex Equities.

Regulatory Services Agreement (''RSA'') with FINRA that, among other things, allocated to FINRA responsibility for the functions noted above that NYSE Regulation previously performed with respect to Arca Securities (*e.g.,* monitoring Arca Securities' compliance with the Exchange's trading rules).[10] As a result of this RSA and the Rule 17d-2 agreement, the only regulatory functions related to Arca Securities that remain with NYSE Regulation are the provision to FINRA of the exceptions noted above of which NYSE Regulation becomes aware (*e.g.,* alerts involving Arca Securities) and the receipt of the quarterly report noted above, which is now produced by FINRA.

Arca Securities was also previously engaged in certain odd-lot and sub-penny transactions as part of its routing function for the Exchange.[11] These functions were implemented on a permanent basis as part of the same proposed rule change implementing the outbound routing functions.[12] As a result of subsequent rule changes, however, Arca Securities no longer performs these functions.[13]

Proposed Rule Change

In order to provide more clarity and transparency to all of the functions that Arca Securities performs on behalf of the Exchange, NYSE Amex proposes to add text to Rule 17—NYSE Amex Equities to describe the inbound routing functions. By doing so, the Exchange would establish a single, central location in its Rules describing all routing broker functions, including both inbound and outbound routing.

Specifically, the existing text of Rule 17—NYSE Amex Equities concerning Routing Brokers' outbound routing function, including with respect to Arca Securities, would be redesignated as new Rule 17(c)(1)—NYSE Amex Equities. The Exchange proposes to add new Rule 17(c)(2)—NYSE Amex Equities to add text describing Arca Securities' inbound routing functions. The rule text in paragraph (c)(2) would be substantially the same as the language set forth in the Commission notices applicable to the Exchange and virtually identical to the inbound router rule text already implemented for another exchange.[14] In this regard, the rule text would track the terms of the inbound routing pilot noted above (and as set forth in the rule filings), with the following exceptions. First, the rule text would reflect that certain regulatory functions are now carried out by FINRA on behalf of NYSE Regulation, rather than by NYSE Regulation directly. Second, the rule text would require procedures and controls that are reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity, based on non-public information regarding planned changes to Exchange systems obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated member organizations of the Exchange, in connection with the provision of inbound order routing to the Exchange.[15] In comparison, the current language from the inbound routing pilot requires procedures and controls that are reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange.

Additionally, the Exchange proposes certain technical changes to Rule 17(c)—NYSE Amex Equities, which governs Arca Securities' outbound routing functions, to align it with the changes proposed herein. The Exchange also proposes to include specific rule text to codify the current date upon which the inbound routing pilots are set to expire—September 30, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[16] of the Act, in general, and furthers the objectives of Section 6(b)(5),[17] in particular, in that it 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 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 Exchange believes that the proposed rule change, which would add specific rule text for routing functionality that has already been approved in substance by the Commission for the Exchange, would enhance the clarity and transparency surrounding such functionality, including the responsibilities and obligations attendant therewith, while also reflecting the Exchange's ongoing efforts to effectively address the concerns previously identified by the Commission regarding the potential for informational advantages favoring Arca Securities vis-à-vis other non-affiliated Exchange members. The Exchange also believes that the proposed rule change would support the principles of Section 11A(a)(1) of the Act[18] in that it seeks to assure economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such

[10] The Exchange notes that FINRA reviews both inbound and outbound routing via Arca Securities pursuant to the 17d–2 agreement and the RSA. The Exchange will review the terms of the RSA in connection with this proposed rule change, and will amend it to reflect the specific terms of this filing.

[11] *See supra* note 3. No rule text was added to the NYSE Amex Rules to describe these functions.

[12] *See id.*

[13] NYSE Amex has modified its electronic trading system in order to accommodate away market center executions in odd-lots and sub-pennies. *See* Securities Exchange Act Release No. 62578 (July 27, 2010), 75 FR 45185 (August 2, 2010) (SR–NYSEAmex–2010–53) (amending various NYSE rules to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the use of Odd-lot System); Securities Exchange Act Release No. 60916 (November 3, 2009), 74 FR 57722 (November 9, 2009) (SR–NYSEAmex–2009–78) (deleting rule text from the Supplementary Material to Rule 62—NYSE Amex Equities because Exchange technology was modified to quote and execute bids/offers priced below $1.00 per share in sub-penny increments of $0.0001).

[14] *See* BATS Rule 2.12. *See also* Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024).

[15] The Exchange notes that the text proposed in Rule 17(c)(2)(B)—NYSE Amex Equities would make clear that the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other member organization.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1).

shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[21] However, Rule 19b–4(f)(6)(iii)[22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay would provide more clarity and transparency in its rule text concerning all of the functions that Arca Securities performs on behalf of the Exchange without undue delay. In addition, the Exchange notes that the proposal is consistent with the rules of another national securities exchange. For these reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex-2011–39 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–NYSEAmex–2011–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–39 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16223 Filed 6–28–11; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] *Id.*

[23] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64740; File No. SR–OCC–2011–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Provide Flexibility to The Options Clearing Corporation With Respect to Its Obligations To Pay Settlement Amounts to Clearing Members Generally as Well as in Emergency Situations

June 24, 2011.

I. Introduction

On April 28, 2011, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2011–05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on May 12, 2011.[2] No comment letters were received on the proposal. This order approves the proposal.

II. Description

The purpose of this rule change is to revise OCC's By-Laws and Rules to provide flexibility to OCC with respect to its obligations to pay settlement amounts to clearing members generally as well as in emergency situations. The proposed rule amendments will change the current daily deadline for OCC to pay settlement amounts to clearing members from 10 a.m. to 1 p.m. (All times referred to in this fling are Central Time). In addition, in the event that an emergency condition exists, the Board of Directors or certain executive officers of OCC would be authorized to extend OCC's obligation to pay settlement amounts to clearing members beyond the 1 p.m. deadline.

Currently, each business day morning, OCC is obligated to collect cash owed by its clearing members for the prior day's settlement activity by 9 a.m. OCC, in turn, is obligated to pay cash owed to its clearing members for the prior day's settlement activity by 10 a.m. This one-hour window is designed to give OCC time to collect all required settlement funds before having to disburse any settlement funds to its clearing members. Daily settlement activity includes obligations relating to: (1) The net premium payments arising from the prior day's option purchases and sales,

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–64436 (May 6, 2011), 76 FR 27697 (May 12, 2011).

(2) the mark-to-market of futures contracts and stock loan positions, and (3) exercises and assignments of cash-settled option contracts.

OCC's settlement banks routinely approve and are required to honor the associated settlements made by OCC and OCC's clearing members within these time frames. On most business days, the entire bank approval process, which irrevocably obligates each settlement bank to make settlement, is completed by 8:30 a.m.

Under OCC's rules, a failure by OCC to pay its daily settlement obligations to clearing members by 10 a.m. constitutes a default. During discussions among OCC's senior management of various potential extreme default and liquidity squeeze scenarios, including the possible default of one of OCC's largest clearing members, OCC analyzed the risk associated with not being able to immediately access liquidity resources in time to meet the 10 a.m. deadline for OCC to pay settlement amounts to clearing members. The deadline may be difficult to meet if, for example, OCC learned of a default near the 9 a.m. deadline. In such a circumstance, OCC would have only one hour or less when the time needed to process and communicate information is considered to access the funds necessary to meet the 10 a.m. deadline.

OCC's immediate liquidity resources rely heavily upon its $2.0 billion revolving credit facility, which is backed by Treasuries held in the clearing fund. A one-hour advance notice is required prior to OCC drawing funds from the credit facility. Beyond the credit facility, it would probably take more than one hour to raise cash by borrowing against the Treasuries held in the clearing fund that are not securing the credit facility either through tri-party repurchase agreements or a traditional bank loan.

The main benefit of moving the deadline to 1 p.m. for OCC to pay clearing members settlement amounts is that it allows up to four hours as opposed to the current one hour, within which OCC can meet its daily settlement requirement without being required to declare an emergency in order to do so. In addition, based on discussions with its settlement banks, OCC believes that notwithstanding a change from the current 10 a.m. deadline to a 1 p.m. deadline, the settlement banks will continue the current practice of approving settlements as soon as they can make a credit determination (*i.e.,* confirm present funds or extend credit to the customer) and process OCC's payment requests, which are tasks that are typically completed by 8:30 a.m.

OCC also has incorporated in its rules the authority to extend the deadline for it to pay settlement amounts to clearing members to the close of the Federal Reserve Banks' Fedwire Funds Service on a settlement day, if necessary, during an emergency situation.[3] Such an extension is consistent with the emergency authority other clearinghouses have to deal with late settlement scenarios. The rule amendments would authorize the Board, Chairman of the Board, Management Vice Chairman, or President of OCC to delay settlement beyond 1 p.m. in emergency situations. The rule amendments would authorize the named officers to take such action because the decision may need to be made under time constraints where the Board (or even the Membership/Risk Committee) could not be convened in time to take the necessary action.[4] OCC anticipates that the emergency authority would be used infrequently, if ever. Under proposed Rule 505, such authority could only be used upon a determination by the Board or an authorized officer that extension of the settlement time is necessary or advisable for the protection of OCC or otherwise in the public interest. In the event that the emergency authority is exercised, a number of protections are built into the process. For example, the determination and the reasons for the extension will be promptly reported to the Commission, the Commodities Futures Trading Commission, and any other regulatory or supervisory authorities having jurisdiction over OCC. In addition, the clearing members will be notified of the extension, and a report outlining the emergency actions will be maintained in OCC's records.

For drafting clarity and economy, the specific settlement times have been removed from the applicable rules, a new definition of ''settlement day'' has been created, and a revised definition of ''settlement time'' has been inserted in Article I of the By-Laws.

III. Discussion

Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of security transactions and to generally protect investors and the public interest. Because the proposed rule change modifies OCC's Rules and By-Laws to give OCC flexibility to make settlement payments to its clearing members in a timely manner during normal and abnormal market conditions, the proposed rule change promotes the prompt and accurate clearance and settlement of security transactions and generally protects investors and the public interest and therefore is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–2011–05) be, and hereby is, approved.[8]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16302 Filed 6–28–11; 8:45 am]

BILLING CODE 8011–01–P

[3] In the event that OCC is unable to pay settlement amounts to clearing members by the close of the Fedwire Funds Service on a settlement day due to an emergency or force majeure condition, OCC will seek appropriate relief from the regulatory or supervisory authorities having jurisdiction over OCC.

[4] Similar authority is provided to the OCC Chairman (or the Board) to summarily suspend a clearing member. *See* OCC Rule 1102.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64734; File No. SR–BX–2011–034]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to Amending the BOX Trading Rules To Establish Facilitation and Solicitation Auction Mechanisms

June 23, 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 June 17, 2011, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, (Doing Business on BOX), Section 31 (Block Trading) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to establish Facilitation and Solicitation auction mechanisms. 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

Currently, BOX offers only one execution mechanism for the execution of two-sided crossing transactions—the Price Improvement Period auction.[3] Competitor options exchanges offer multiple mechanisms to execute two-sided orders, including facilitation and solicitation mechanisms for large block orders.[4] To remain competitive with other options exchanges for block-size facilitation and solicitation transactions, BOX has developed additional auction mechanisms. This rule change proposes implementation on BOX of a Facilitation Auction mechanism and a Solicitation Auction mechanism.

Facilitation Auction

The Facilitation Auction will allow Order Flow Providers (''OFPs'') to enter crossing transactions where the OFP represents a block-size order as agent (''Agency Order'') and (1) Is trading against the Agency Order as principal (*i.e.,* facilitating the Agency Order) and/or (2) has solicited an order to take the opposite side of the Agency Order. Thus, the Facilitation Auction will allow block-size order executions against facilitated or solicited orders, or against a combination of facilitated and solicited orders. This auction will give OFPs the added flexibility to execute a transaction where the OFP facilitates only a portion of the order opposite its Agency Order, and has solicited interest from other parties for the remaining size of the order opposite its Agency Order. The Facilitation Auction will be limited to orders of fifty (50) contracts or more.

OFPs must be willing to execute the entire size of Agency Orders entered into the Facilitation Auction through the submission of a contra ''Facilitation Order.'' Upon the entry of an Agency Order and Facilitation Order into the Facilitation Auction, a broadcast message will be sent to Options Participants, giving them one second to enter responses with the prices and sizes at which they would be willing to participate in the facilitation opposite the Agency Order (''Responses''). Responses may be priced at the price of the Agency Order or at a better price and must not exceed the size of the Agency Order to be facilitated. At the end of the one second period for the entry of Responses, the Facilitation Order will be automatically executed with the Agency Order.

Unless there is sufficient size to execute the entire Agency Order at a better price, Public Customer bids (offers) and Public Customer Responses on BOX at the time the Agency Order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price. Non-Public Customer and Market Maker bids (offers) and Non-Public Customer and Market Maker Responses on BOX at the time the Agency Order is executed that are priced higher (lower) than the facilitation price will be executed against the Agency Order at their stated price, providing the Agency Order execution at a better price for the number of contracts associated with such higher bids (lower offers) and Responses.

The facilitating OFP will execute at least forty percent (40%) of the original size of the Facilitation Order, but only after better-priced bids (offers) and Responses on BOX, as well as Public Customer bids (offers) and Responses at the facilitation price, are executed in full. After the facilitating OFP has executed his forty percent (40%), Non-Public Customer and Market Maker bids (offers) and Responses on BOX at the facilitation price will participate in the execution of the Agency Order based upon price and time priority.

The following example illustrates the execution priority within the Facilitation Auction. An OFP submits a Facilitation Order to buy and Agency Order to sell 100 contracts at a proposed execution price of $2.00. At the end of the auction, the NBBO is bid $2.00—offer $2.10. During the one second auction, BOX receives the following bids (offers) in time priority:

(1) Market Maker offer on the Book to buy 100 contracts at $2.00.

(2) Public Customer Response to buy 50 contracts at $2.00.

Since there are no bids (offers) or Responses at an improved price, the Public Customer would execute 50 contracts against the Agency Order; the Facilitation Order will execute 40 contracts (40% of 100) against the Agency Order; and the Market Maker on the Book would execute the remaining 10 contracts against the Agency Order; all at $2.00.

Solicitation Auction

To better compete for block-size solicited transactions, BOX has developed a Solicitation Auction. The Solicitation Auction is a process by which an OFP can attempt to execute orders of 500 or more contracts it represents as agent (the ''Agency Order'') against contra orders that the OFP has solicited (''Solicited Order'').[5] The proposed rule change will allow OFPs to enter both sides of a proposed solicited cross (the Agency and Solicited Orders). These solicitation transactions will be required to be for at least 500 contracts and will be executed only if the price is at or between the national best bid or offer (''NBBO''). Each Agency Order entered into the Solicitation Auction shall be all-or-none.

When a proposed solicited cross is entered into the Solicitation Auction, BOX will broadcast a message to Options Participants and they will have

[3] Capitalized terms not otherwise defined herein shall have the meanings prescribed within the BOX Rules.

[4] *See, e.g.,* International Securities Exchange Rule 716 and Chicago Board Options Exchange Rule 6.74B.

[5] Although orders solicited from Public Customers are not subject to the exposure requirement of Supplementary Material .02 to Section 17 of Chapter V of the BOX Rules, they would be permitted to be entered into the Solicitation Auction should OFPs choose this alternative.

one second to respond with the prices and sizes at which they would be willing to participate in the execution of the Agency Order (''Responses''). At the end of the period for Responses, the Agency Order will be automatically executed in full or cancelled. The Agency Order will be executed against the Solicited Order at the proposed execution price unless there is sufficient size to execute the entire Agency Order at a better price or prices, or there is a Public Customer Order (A) at a price equal to or better than the proposed execution price; and (B) on the BOX Book within a depth of the BOX Book so that it would otherwise trade with the Agency Order if the Agency Order had been submitted to the BOX Book, (a ''Book Priority Public Customer Order'').[6]

If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s) and the Solicited Order will be cancelled.[7] For example, an OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. At the end of the one second auction, the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Market Maker Response to sell 400 contracts at $2.08;

(2) Market Maker offer on the Book to sell 300 contracts at $2.08;

(3) Public Customer Response to sell 200 contracts at $2.08;

(4) Public Customer Order on the Book to sell 300 contracts at $2.08.

Since there is sufficient size to execute the entire Agency Order at an improved price, the Agency Order will execute in time priority against each of the bids (offers) and Responses at $2.08, and the Solicited Order would be cancelled. The Agency Order would execute 400 contracts against the Market Maker Response; 300 contracts against the Market Maker offer on the Book; 200 contracts against the Public Customer Response; and 100 contracts against the Public Customer Order on the Book. The remaining 200 contracts of the Public Customer Order on the Book would remain unexecuted.

If at the time of execution, there are one or more Book Priority Public Customer Orders on the BOX Book, the Agency Order will be executed against the BOX Book if there is sufficient size available to execute the entire Agency Order, and the Solicited Order will be cancelled. In this instance, the aggregate size of all bids (offers) on the BOX Book at or better than the proposed execution price will be used to determine whether there is sufficient size available to execute the entire Agency Order. Responses are excluded when determining whether sufficient size exists to execute the Agency Order at its proposed price.[8] For example, an OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. At the end of the one second auction, the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Market Maker offer on the Book to sell 700 contracts at $2.09;

(2) Public Customer Order on the Book to sell 400 contracts at $2.10.

There is a Book Priority Public Customer Order on the Book and there is sufficient size on the Book to execute the entire Agency Order. As such, the Agency Order will be executed against the orders on the BOX Book based upon price/time priority, and the Solicited Order will be cancelled. In this example, the Agency Order will execute 700 contracts against the Market Maker on the Book at $2.09, and 300 contracts against the Book Priority Public Customer Order. The remaining 100 contracts of the Public Customer Order on the Book would remain unexecuted.

Similar to the example above, assume during the auction BOX received the following bids (offers) in time priority:

(1) Public Customer Order on the Book to sell 400 contracts at $2.09;

(2) Market Maker offer on the Book to sell 600 contracts at $2.10.

Then, the Agency Order will also be executed against the orders on the Book based upon price/time priority and the Solicited Order will be cancelled. In this example, the Agency Order will execute 400 contracts against the Public Customer Order at $2.09, and 600 contracts against the Market Maker at $2.10.

BOX determines whether sufficient size exists on the BOX Book to execute the Agency Order so as to prevent (i) Any trade-through of the BOX Book and (ii) any Book Priority Public Customer Order from being bypassed by a Solicitation Auction execution. If the Agency Orders in these two examples above had been sent directly to the BOX Book rather than the Solicitation Auction, the resulting execution against the Agency Order would have been the same.

If there is a Book Priority Public Customer Order on the BOX Book, but there is insufficient size to execute the entire Agency Order at the proposed execution price, however; both the Agency and Solicited Orders will be cancelled. For example, an OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. At the end of the one second auction, the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Public Customer Order on the Book to sell 400 contracts at $2.10;

(2) Market Maker offer on the Book to sell 300 contracts at $2.10.

In this example, there is a Book Priority Public Customer Order on the BOX Book, but there is insufficient size on the Book to execute the entire Agency Order at the proposed execution price. As such, both the Solicited Order and Agency Order will be cancelled, except under the Surrender Quantity conditions described below.

Surrender Quantity

To increase the successful execution of block Solicitation Auction trades and Public Customer Orders on BOX while protecting the BOX Book, BOX has developed the ''Surrender Quantity'' function for Solicitation Auctions. When starting a Solicitation Auction, the OFP may designate, for the Solicited Order, the quantity of contracts of the

[6] In contrast to the Facilitation Mechanism, only Public Customer Orders that are within a depth of the BOX Book so that they would otherwise trade with the Agency Order if it were submitted to the BOX Book are eligible to trade with the Agency Order in the Solicitation Mechanism. Options Participants' orders submitted to BOX are ranked and maintained in the BOX Book according to price/time priority, such that within each price level, all orders are organized by time of order entry. No distinction is made to this priority with regard to account designation (Public Customer, Broker/Dealer, or Market Maker). BOX believes that price/time priority provides an incentive for all market participants to post their best prices quickly. As such, BOX will consider only these Priority Public Customer Orders based on price/time priority. Stated otherwise, if an Agency Order of the same block size was executed on the BOX Book rather than through the Solicitation Auction, only those orders with price/time priority would execute against the Agency Order. Those Public Customer Orders on the BOX Book beyond the depth equal to the Agency Order size would not be executed against the Agency Order.

[7] The aggregate size of all bids (offers) and Responses at each price will be used to determine whether the entire Agency Order can be executed at an improved price (or prices).

[8] As set forth in proposed Supplementary Material .03 to Chapter V, Section 31, Responses are sent by Options Participants in response to a Facilitation or Solicitation Auction broadcast message. Responses represent non-firm interest that can be canceled or decremented as to price or size at any time prior to execution and are not displayed to any market participants.

Agency Order for which the OFP is willing to 'surrender' interest to the BOX Book (''Surrender Quantity''). The Surrender Quantity will apply at the time of execution only if there are (1) Book Priority Public Customer Orders on the BOX Book, or (2) any bids (offers) on the BOX Book at any price better than the proposed execution price. Only these orders on the BOX Book will be eligible for execution utilizing the Surrender Quantity.

With the Surrender Quantity function, BOX seeks to protect Public Customer Orders that would have traded with the Agency Order if the Agency Order had been submitted to the BOX Book. When the aggregate size of (1) Book Priority Public Customer Orders and (2) all bids (offers) on the BOX Book at prices better than the proposed execution price, is equal to or less than the Surrender Quantity, the Agency Order will first execute against all such Book Priority Public Customer Orders and all such bids (offers), and then against the Solicited Order. If the aggregate size of all such Book Priority Public Customer Orders and all such bids (offers) exceeds the Surrender Quantity, but there is insufficient size to execute the entire Agency Order, then both the Solicited Order and the Agency Order will be cancelled.

Example: The OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. The OFP also designates 200 contracts as the Surrender Quantity. At the end of the one second auction the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Public Customer Order on the Book to sell 200 contracts at $2.10;

(2) Market Maker offer on the Book to sell 800 contracts at $2.10.

Without the Surrender Quantity, the Agency Order would execute against the Public Customer Order on the Book for 200 contracts at $2.10 and against the Market Maker on the Book for 800 contracts at $2.10. Using the Surrender Quantity, however, the Agency Order would still execute against the Public Customer Order on the Book, but would then execute against the Solicited Order for 800 contracts at $2.10.

Additionally, use of the Surrender Quantity function will allow block-size Solicitation Auction trades in certain instances in which there would otherwise be no execution. In these instances, use of the Surrender Quantity will also prevent (i) a trade-through of the BOX Book and any Book Priority Public Customer Order from being bypassed upon a Solicitation Auction execution. Under the proposed rule change there are other situations when, absent use of the Surrender Quantity, the Solicitation Auction would result in no trade. The first is when a Book Priority Public Customer Order is on the BOX Book and there is insufficient quantity on BOX, other than the Solicited Order, to execute the entire Agency Order. Without the Surrender Quantity function, both the Solicited Order and Agency Order would be cancelled and the Public Customer Order would remain unexecuted, keeping the Public Customer Order on the Book from being bypassed upon a Solicitation Auction execution. The second instance is when the proposed execution price is inferior to the best bid or offer on BOX (meaning there is a better priced bid (offer) on BOX) or inferior to the NBBO. Again, without the Surrender Quantity function, no execution would occur, keeping the better priced bids (offers) on the BOX Book from being bypassed upon a Solicitation Auction execution. In both instances, Public Customer Orders, the better priced bids (offers), the Solicited Order and the Agency Order remain unexecuted. Under this proposed rule change, however, if the Surrender Quantity is utilized and is of sufficient size, then the orders are executed against the Agency Order as follows: Public Customer Orders, better priced bids (offers), and the Solicited Order. If the Surrender Quantity is of insufficient size, then no execution occurs and again any trade-through of the BOX Book or execution ahead of a Book Priority Public Customer Order is prevented. The Surrender Quantity provides the potential for various market participants to benefit from the execution they desire. The following examples illustrate the proposed Surrender Quantity concept:

Example: The OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. The OFP also designates 200 contracts as the Surrender Quantity. At the end of the one second auction the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Response of 150 contracts to sell at $2.08;

(2) Market Maker offer on the Book of 200 contracts at $2.10;

(3) Response of 100 contracts to sell at $2.10;

(4) Public Customer Order offer on the Book of 100 contracts at $2.10;

(5) Response of 50 contracts to sell at $2.10.

Since there is insufficient size to execute the entire Agency Order and the Surrender Quantity of 200 is greater than the total size of Book Priority Public Customer Orders (100), the Agency Order will execute 100 contracts against the Book Priority Public Customer Order at $2.10 and the remaining 900 contracts against the Solicited Order at $2.10.[9] In this example, without the use of the Surrender Quantity, the Priority Public Customer Order would force the Agency Order and Solicited Order to be cancelled while the Public Customer Order remained unexecuted.

Example: The OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. The OFP also designates 200 contracts as the Surrender Quantity. At the end of the one second auction the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Response of 150 contracts to sell at $2.08;

(2) Market Maker offer on the Book of 100 contracts at $2.08;

(3) Response of 100 contracts to sell at $2.10;

(4) Public Customer Order on the Book of 50 contracts to sell at $2.08;

(5) Public Customer Order on the Book of 50 contracts to sell at $2.10

(6) Response of 50 contracts to sell at $2.10.

Since there is insufficient size to execute the entire Agency Order, and the Surrender Quantity of 200 is equal to the total size of Public Customer Orders (100) and the better priced offers (Market Maker offer of 100 at $2.08), the Agency Order will execute 100 contracts at $2.10 against the Public Customer Orders, 100 contracts against the Market Maker offer at $2.08, and the remaining 800 contracts against the Solicited Order at $2.10. The Public Customer Order of 50 contracts to sell at $2.08 executes at the proposed solicitation execution price of $2.10. The Agency Order executes at $2.08 for the 100 contracts against the Market Maker offer. Without the Surrender Quantity function, the Book Priority Public Customer Order and the market maker offer on BOX at a better price would result in the Agency Order and Solicited Order being cancelled while the Public Customer Orders remained unexecuted.

Public Customer bids (offers) on the BOX Book at the time of an execution that includes a Surrender Quantity, and

[9] As noted at the beginning of this section regarding *Surrender Quantity,* the only orders eligible for execution utilizing the Surrender Quantity are (1) Book Priority Public Customer Orders and (2) any bids (offers) on the BOX Book at any price better than the proposed execution price. Responses are not eligible for execution utilizing the Surrender Quantity.

that are priced higher (lower) than the proposed Solicitation Auction execution price, will be executed against the Agency Order at the proposed execution price. BOX believes this will provide Public Customers the benefit of a better price for the number of contracts associated with such higher bids (lower offers). Non-Public Customer and Market Maker bids (offers) on the BOX Book at the time of a Surrender Quantity execution that are priced higher (lower) than the proposed execution price will be executed at their stated price. BOX believes this will provide the Agency Order a better execution price for those contracts.

Additionally, the proposed rule change would require OFPs to deliver to customers a written notification describing the terms and conditions of the Solicitation Auction prior to executing Agency Orders using the Solicitation Auction. Such written notification would be required to be in a form approved by the Exchange.

Supplementary Material to Section 31

Further, the proposed rule change specifies in Supplementary Material to Chapter V, Section 31 that it will be a violation of an Options Participant's duty of best execution to its customer if it were to cancel a Facilitation Order to avoid execution of the order at a better price. The availability of the Facilitation Auction does not alter an Options Participant's best execution duty to obtain the best price for its customer. Accordingly, while Facilitation Orders may be canceled during the time period given for the entry of Responses, if an Options Participant were to cancel a Facilitation Order when there was a better price available on BOX and subsequently re-enter the Facilitation Order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the Options Participant did so to avoid execution of its customer order in whole or in part by other brokers at the better price.

In addition, Options Participants will be prohibited from using the Solicitation Auction to circumvent Section 17 of Chapter V which limits principal transactions. Prohibited actions may include, but be not limited to, Options Participants entering Solicitation Orders that are solicited from (1) Affiliated broker-dealers, or (2) broker-dealers with which the Options Participant has an arrangement that allows the Options Participant to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Moreover, any Solicited Orders entered by Options Participants to trade against Agency Orders may not be for the account of a BOX market maker that is assigned to the options class.

Additionally, the proposed rule change would allow Orders and Responses to be entered into the BOX Facilitation and Solicitation Auctions and receive executions at penny increments. Any BOX OFP may enter Orders into the Facilitation and Solicitation Auctions, and any BOX Participant may enter a Response within the proposed auction mechanisms. BOX believes that auction competition and executions at penny increments will provide greater flexibility in pricing for block-size orders and provide enhanced opportunities for block-size orders to benefit from price improvement.

Finally, the proposed rule change also adds references to the Facilitation and Solicitation Auction mechanisms to Chapter V, Section 17 (Customer Orders and Order Flow Providers), and to Chapter III, Section 4(f) (Prevention of the Misuse of Material Nonpublic Information).

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed rule change to implement a Facilitation Auction and Solicitation Auction on BOX is designed to help BOX remain competitive among options exchanges and provide market participants additional opportunities to execute block-size crossing transactions.

BOX believes the proposed rule change is consistent with the Act because executions based upon price/time priority provide an incentive for all market participants to post their best prices quickly to the market. BOX does not believe that customers' electronic orders must be accorded priority over market makers who are not acting as agent with respect to those customers. These market makers are not required to yield priority to Public Customer Orders if the market maker has time priority at a particular price level. In this way, BOX places all of its market participants on the same footing, with no participant enjoying any special or unique control over the timing of execution or order handling advantages. All orders are processed for execution by an electronic computer system—the BOX Trading Host. Specifically, orders sent to BOX are transmitted directly from remote electronic terminals to the trading system. Once an order is submitted to BOX, the order is executed against another order based on the established matching algorithm. The execution does not depend on the Options Participant but rather upon what other orders are entered into BOX at or around the same time as the subject order, what orders are on the BOX Book, and where the order is ranked based on the price/time priority ranking algorithm. Accordingly, Options Participants do not control or influence the result or timing of orders submitted to BOX. The Commission has repeatedly found this price/time priority model consistent with the Act[12] regarding exchanges' electronic trading mechanisms. The proposed Solicitation Auction mechanism will not execute any order ahead of any Public Customer order on BOX where that customer order would have otherwise traded with the Agency Order (''Book Priority Public Customer Order''). As such, BOX believes the principles of price/time priority for matching orders within its proposed Solicitation Auction are consistent with the Act.

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

Within 45 days of the date of publication of this notice in the **Federal**

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (Order Approving BOX Facility); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (Order Approving BATS Options Rules); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004) (Order Approving NASDAQ Options Market).

Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BX. 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 publicly available. All submissions should refer to File Number SR–BX–2011–034 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16293 Filed 6–28–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64727; File No. SR–C2–2011–012]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Reduce the Minimum Size of the Nominating and Governance Committee

June 22, 2011.

I. Introduction

On April 27, 2011, C2 Options Exchange, Incorporated (''C2'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the minimum size of the Nominating and Governance Committee (''NGC'') from seven to five. On May 18, 2011, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on May 10, 2011.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

C2 is proposing to reduce the minimum size of its NGC from seven to five directors. Section 4.4 of the Second Amended and Restated Bylaws of C2 (''Bylaws'') currently provides, in pertinent part, that the NGC shall consist of at least seven directors, including both Industry and Non-Industry Directors; that a majority of the directors on the Committee shall be Non-Industry Directors; and that the exact number of members on the Committee shall be determined from time to time by C2's Board of Directors (the ''Board'' or ''C2 Board''). Pursuant to the proposed rule change, Section 4.4 of the Bylaws would be amended to provide that the NGC shall consist of at least five directors. The other provisions of Section 4.4 of the Bylaws would remain unchanged.[5]

In outlining the purpose behind its proposal, the Exchange noted that the size of its Board declined from its initial size of twenty-three to nineteen directors in 2009 and again to sixteen directors in 2011.[6] As the size of its Board has declined, the Exchange noted that it has become more challenging to populate larger-size Board committees since there are fewer directors to serve on a multitude of committees.[7] The Exchange's proposal to reduce the minimum size of the NGC is intended to help address this issue.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,[9] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, as well as Section 6(b)(5) of the

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the time C2 submitted the original proposed rule change, it had not yet obtained formal approval from its Board of Directors for the specific Bylaw changes set forth in this proposed rule change. C2 stated that once that approval was obtained, it would file a technical amendment to its proposed rule change to reflect that approval. In Amendment No. 1, the Exchange notes that the C2 Board of Directors approved the specific Bylaw changes set forth in SR–C2–2011–012 on May 17, 2011 and stated that no further action was necessary in connection with its proposal. Because Amendment No. 1 is technical in nature, the Commission is not required to publish it for public comment.

[4] *See* Securities Exchange Act Release No. 64394 (May 4, 2011), 76 FR 27112 (''Notice'').

[5] Additionally, the title of the Bylaws would be changed to the Third Amended and Restated Bylaws of C2.

[6] Section 3.1 of the Bylaws provides that the C2 Board shall consist of not less than eleven and not more than twenty-three directors, with the exact size determined by the Board.

[7] *See* Notice, *supra* note 4, at 27112.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(1).

Act,[10] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. While the Exchange has proposed to reduce the minimum size of the NGC, it has not proposed any other changes to the composition of the committee or the scope or exercise of its responsibilities. In its filing, the Exchange affirmatively represented that the NGC ''will continue to be able to appropriately perform its functions'' despite the reduction in minimum required size.[11] The Commission further finds that the proposal, as modified by Amendment No. 1, is consistent with the requirements of Section 6(b)(3) of the Act,[12] which requires that one or more directors of an exchange shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer.

In particular, the Commission notes that the Exchange will continue to provide for the fair representation of C2 Trading Permit Holders in the selection of directors and the administration of the Exchange consistent with Section 6(b)(3) of the Act [13] following this rule change. Specifically, the C2 Bylaws will continue to require that at least thirty percent of the directors on the C2 Board be Industry Directors and that at least twenty percent of C2's directors be Representative Directors elected by permit holders.[14] Further, the NGC will continue to include both Industry and Non-Industry Directors (including a majority of Non-Industry Directors) and have an Industry-Director Subcommittee that is composed of all of the Industry Directors serving on the Committee. Representative Directors will continue to be nominated (or otherwise selected through a petition process) by the Industry-Director Subcommittee. Additionally, C2 Trading Permit Holders will continue to be able to nominate alternative Representative Director candidates to those nominated by the Industry Director Subcommittee, in which case a Run-off Election will be held in which C2's Trading Permit Holders vote to determine which candidates will be elected to the C2 Board to serve as Representative Directors. Furthermore, the Commission notes that the Exchange's proposal to reduce the minimum size of its NGC is consistent with a proposal that the Commission previously approved for another self-regulatory organization in which that self-regulatory organization reduced the minimum size of its nominating and governance committee from six to four members.[15]

Finally, the Exchange has represented that, although the proposed rule change would permit the Exchange to appoint a five-person NGC and the Exchange may elect to do so in the future, it is the current intention of the Exchange to appoint a six-person NGC.[16]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–C2–2011–012), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16243 Filed 6–28–11; 8:45 am]

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[10] 15 U.S.C. 78f(b)(5).

[11] *See* Notice, *supra* note 4, at 27112.

[12] 15 U.S.C. 78f(b)(3).

[13] 15 U.S.C. 78f(b)(3).

[14] *See* Section 3.2 of the C2 Bylaws (defining ''Representative Director'').

[15] *See* Securities Exchange Act Release No. 54494 (September 25, 2006), 71 FR 58023 (October 2, 2006) (SR–CHX–2006–23) (approving reduction of the Chicago Stock Exchange's Nominating and Governance Committee from six directors to four directors). *See also* Article II, Section 3 of the Bylaws of the Chicago Stock Exchange, Inc. (providing for a Nominating and Governance Committee with four directors).

[16] *See* Notice, *supra* note 4, at 27112.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64729; File No. SR–NYSE–2011–24]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 17 To Codify Inbound Routing Functions Performed by Its Affiliate Broker-Dealer, Archipelago Securities LLC

June 23, 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 June 16, 2011, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. 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 NYSE Rule 17 to codify inbound routing functions performed by its affiliate broker-dealer, Archipelago Securities LLC (''Arca Securities''). The text of the proposed rule change is available at the Exchange's principal office, at *http://www.nyse.com,* at the Commission's Public Reference Room, and at 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 17 to codify inbound routing functions performed by its affiliate broker-dealer, Arca Securities, which have previously been approved by the Commission.[3]

Background—Arca Securities Functions as Routing Broker

Arca Securities currently is the primary outbound and inbound routing broker for NYSE. The outbound routing function for NYSE is governed by NYSE Rules 13 and 17.[4] These rules permit NYSE to utilize Arca Securities to route orders to an away market center for execution whenever such routing is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's affiliates, NYSE Amex LLC (''NYSE Amex'') and NYSE Arca, Inc. (''NYSE Arca''), are proposing substantially similar rule changes. *See* SR–NYSEAmex–2011–39 and SR–NYSEArca–2011–38.

[4] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (SR–NYSE–2007–29).

required by Exchange Rules and federal securities laws.[5]

The inbound routing function of Arca Securities currently is governed by pilot programs. In September 2008, the Commission approved a pilot program that permitted Arca Securities, acting as the outbound router for NYSE Arca, Inc., to route PO Plus Orders to NYSE.[6] The pilot was thereafter expanded to include all ''NYSE Arca order types approved or implemented on or after'' July 7, 2009,[7] and an additional pilot was established to permit Arca Securities to route orders from NYSE Amex to NYSE.[8] The pilots were extended and are currently scheduled to expire on September 30, 2011.[9] The terms of the inbound routing pilots are generally set forth in the Commission's approval orders, rather than rule text (except as noted below).[10] The terms of the pilots are as follows:

The Exchange and the Financial Industry Regulatory Authority (''FINRA'') have entered into a Rule 17d–2 agreement pursuant to which FINRA is allocated regulatory responsibilities to review Arca Securities' compliance with certain Exchange rules. The Exchange, however, retains ultimate responsibility for enforcing its rules with respect to Arca Securities.

NYSE Regulation monitors Arca Securities for compliance with the Exchange's trading rules and collects and maintains certain related information. Specifically, NYSE Regulation collects and maintains the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where Arca Securities is identified as a participant that has potentially violated Exchange or applicable SEC rules—in an easily accessible manner so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examination.

NYSE Regulation has agreed with the Exchange that it will provide a report to the Exchange's Chief Regulatory Officer, on a quarterly basis, that (i) Quantifies all alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated Exchange or SEC rules, and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated Exchange or Commission rules.

NYSE Euronext, as parent of the Exchange, was obligated to adopt a rule requiring it to establish and maintain procedures and internal controls reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange.[11]

Since the initiation of the inbound routing pilot in 2008, the Exchange in 2010 entered into a comprehensive Regulatory Services Agreement (''RSA'') with FINRA that, among other things, allocated to FINRA responsibility for the functions noted above that NYSE Regulation previously performed with respect to Arca Securities (*e.g.,* monitoring Arca Securities' compliance with the Exchange's trading rules).[12] As a result of this RSA and the Rule 17d–2 agreement, the only regulatory functions related to Arca Securities that remain with NYSE Regulation are the provision to FINRA of the exceptions noted above of which NYSE Regulation becomes aware (*e.g.,* alerts involving Arca Securities) and the receipt of the quarterly report noted above, which is now produced by FINRA.

Arca Securities was also previously engaged in certain odd-lot and sub-penny transactions as part of its routing function for the Exchange.[13] These functions were implemented on a permanent basis as part of the same proposed rule change implementing the outbound routing functions.[14] As a result of subsequent rule changes, however, Arca Securities no longer performs these functions.[15]

Proposed Rule Change

In order to provide more clarity and transparency to all of the functions that Arca Securities performs on behalf of the Exchange, NYSE proposes to add text to Rule 17 to describe the inbound routing functions. By doing so, the Exchange would establish a single, central location in its Rules describing all routing broker functions, including both inbound and outbound routing.

Specifically, the existing text of Rule 17 concerning Routing Brokers' outbound routing function, including with respect to Arca Securities, would be redesignated as new Rule 17(c)(1). The Exchange proposes to add new Rule 17(c)(2) to add text describing Arca Securities' inbound routing functions. The rule text in paragraph (c)(2) would be substantially the same as the language set forth in the Commission notices applicable to the Exchange and virtually identical to the inbound router rule text already implemented for another exchange.[16] In this regard, the rule text would track the terms of the inbound routing pilot noted above (and as set forth in the rule filings), with the following exceptions. First, the rule text would reflect that certain regulatory functions are now carried out by FINRA on behalf of NYSE Regulation, rather than by NYSE Regulation directly. Second, the rule text would require

[5] *See id.* NYSE Rules 13 and 17 were thereafter amended in 2008 to permit not only Arca Securities but also unaffiliated third-party broker-dealers to perform the outbound routing function, which serves as a risk management function in the event of a system malfunction or failure. *See* Securities Exchange Act Release No. 57870 (May 27, 2008), 73 FR 31526 (June 2, 2008) (SR–NYSE–2008–37). As such, Rule 17 currently refers generically to ''Routing Broker(s),'' rather than just Arca Securities.

[6] *See* Securities Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (SR–NYSE–2008–76).

[7] *See* Securities Exchange Act Release No. 60255 (July 7, 2009), 74 FR 34065 (July 14, 2009) (SR–NYSE–2009–58).

[8] *See* Securities Exchange Act Release No. 59011 (November 24, 2008), 73 FR 73360 (December 2, 2008) (SR–NYSE–2008–122).

[9] *See* Securities Exchange Act Release Nos. 60752 (September 30, 2009), 74 FR 51641 (October 7, 2009) (SR–NYSE–2009–101) (extending pilot from September 29, 2009 to December 31, 2009); 61268 (December 31, 2009), 75 FR 1104 (January 8, 2010) (SR–NYSE–2009–128) (extending pilot from December 31, 2009 to March 31, 2010); 61864 (March 31, 2010), 75 FR 17814 (April 7, 2010) (SR–NYSE–2010–27) (extending pilot from March 31, 2010 to September 30, 2010); 62832 (September 2, 2010), 75 FR 55391 (September 10, 2010) (SR–NYSE–2010–64) (extending pilot from September 30, 2010 to March 31, 2011); and 64013 (March 2, 2011), 76 FR 12774 (March 8, 2011) (SR–NYSE–2011–08) (extending pilot from March 31, 2011 to September 30, 2011).

[10] *See supra* note 7.

[11] *See supra* note 7. *See also* NYSE Rule 2B.

[12] The Exchange notes that FINRA reviews both inbound and outbound routing via Arca Securities pursuant to the 17d–2 agreement and the RSA. The Exchange will review the terms of the RSA in connection with this proposed rule change, and will amend it to reflect the specific terms of this filing.

[13] *See supra* note 5. No rule text was added to the NYSE Rules to describe these functions.

[14] *See id.*

[15] NYSE has modified its electronic trading system in order to accommodate away market center executions in odd-lots and sub-pennies. *See* Securities Exchange Act Release No. 62578 (July 27, 2010), 75 FR 45185 (August 2, 2010) (SR–NYSE–2010–43) (amending various NYSE rules to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the use of Odd-lot System); Securities Exchange Act Release No. 60915 (November 3, 2009), 74 FR 57724 (November 9, 2009) (SR–NYSE–2009–107) (deleting Supplementary Material .20 from NYSE Rule 62 because Exchange technology was modified to quote and execute bids/offers priced below $1.00 per share in sub-penny increments of $0.0001).

[16] *See* BATS Rule 2.12. *See also* Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024).

procedures and controls that are reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity, based on non-public information regarding planned changes to Exchange systems obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated member organizations of the Exchange, in connection with the provision of inbound order routing to the Exchange.[17] In comparison, the current language from the inbound routing pilot requires procedures and controls that are reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange.

Additionally, the Exchange proposes certain technical changes to NYSE Rule 17(c), which governs Arca Securities' outbound routing functions, to align it with the changes proposed herein. The Exchange also proposes to include specific rule text to codify the current date upon which the inbound routing pilots are set to expire—September 30, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[18] of the Act, in general, and furthers the objectives of Section 6(b)(5),[19] in particular, in that it 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 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 Exchange believes that the proposed rule change, which would add specific rule text for routing functionality that has already been approved in substance by the Commission for the Exchange, would enhance the clarity and transparency surrounding such functionality, including the responsibilities and obligations attendant therewith, while also reflecting the Exchange's ongoing efforts to effectively address the concerns previously identified by the Commission regarding the potential for informational advantages favoring Arca Securities vis-à-vis other non-affiliated Exchange members. The Exchange also believes that the proposed rule change would support the principles of Section 11A(a)(1) of the Act[20] in that it seeks to assure economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[23] However, Rule 19b–4(f)(6)(iii)[24] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay would provide more clarity and transparency in its rule text concerning all of the functions that Arca Securities performs on behalf of the Exchange without undue delay. In addition, the Exchange notes that the proposal is consistent with the rules of another national securities exchange. For these reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e–mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–24 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–NYSE–2011–24. 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

[17] The Exchange notes that the text proposed in Rule 17(c)(2)(B) would make clear that the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other member organization.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] *Id.*

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2011–24 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16224 Filed 6–28–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64730; File No. SR–NYSEArca–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting New NYSE Arca Equities Rule 7.41 to Codify Outbound and Inbound Routing Functions Performed by Its Affiliate Broker-dealer, Archipelago Securities LLC

June 23, 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 June 16, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Arca. 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 new NYSE Arca Equities Rule 7.41 to codify outbound and inbound routing functions performed by its affiliate broker-dealer, Archipelago Securities LLC (''Arca Securities''). The text of the proposed rule change is available at the Exchange's principal office, at *http://www.nyse.com,* at the Commission's Public Reference Room, and at 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes new NYSE Arca Equities Rule 7.41 to codify outbound and inbound routing functions performed by its affiliate broker-dealer, Arca Securities, which have previously been approved by the Commission.[3]

Background—Arca Securities Functions as Routing Broker

Arca Securities currently is the primary outbound and inbound routing broker for NYSE Arca. The terms of the outbound routing function for NYSE Arca are generally set forth in the Commission's approval orders,[4] rather than rule text,[5] and permit NYSE Arca to utilize Arca Securities to route orders to an away market center for execution whenever such routing is required by Exchange Rules and federal securities laws. The terms of the outbound routing function of Arca Securities generally are as follows:

Arca Securities operates and is regulated as a facility of the Exchange, subject to and consistent with Section 6 of the Securities Exchange Act of 1934 (''Act'').

A self-regulatory organization (''SRO'') unaffiliated with the Exchange or any of its affiliates (currently the Financial Industry Regulatory Authority or ''FINRA''), carries out oversight and enforcement responsibilities as the Designated Examining Authority (''DEA'') designated by the Commission pursuant to Rule 17–1 of the Act with the responsibility for examining Arca Securities for compliance with the applicable financial responsibility rules.

The agreement between the Exchange and FINRA pursuant to Rule 17–2 under the Act allocates to FINRA the responsibility to receive regulatory reports from Arca Securities, to examine Arca Securities for compliance and to enforce compliance by Arca Securities with the Act, the rules and regulations thereunder and FINRA rules, and to carry out other specified regulatory functions with respect to Arca Securities.

ETP Holders' use of Arca Securities to route orders to another market center from the Exchange is optional.[6]

Arca Securities will not engage in any business other than its outbound routing function (including, in that function, the self-clearing functions that it currently performs for trades with respect to orders routed to other market centers) and other activities approved by the Commission.

The operation of Arca Securities as a facility of the Exchange providing outbound routing services is subject to Exchange and Commission oversight and the Exchange must file with the Commission rule changes and fees relating to Arca Securities.

The inbound routing function of Arca Securities currently is governed by a pilot program established to permit Arca Securities to route orders from NYSE and NYSE Amex to NYSE Arca.[7] The

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's affiliates, New York Stock Exchange, LLC (''NYSE'') and NYSE Amex LLC (''NYSE Amex''), are proposing substantially similar rule changes. *See* SR–NYSE–2011–24 and SR–NYSEAmex-2011–39.

[4] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949, 56952–56953 (September 29, 2005) (SR–PCX–2005–90).

[5] NYSE Arca Equities Rule 7.31 sets forth order types available for trading on the Exchange, including those that may route to another market center, and NYSE Arca Equities Rule 1.1(qq) defines the term ''Routing Agreement.''

[6] An ETP Holder that does not want to use Arca Securities may use other routers to route orders to other market centers or choose to send an order to the Exchange that, if not executable on the Exchange, will be cancelled and returned to the ETP Holder, at which time the ETP Holder could choose to route the order to another market itself.

[7] *See* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (SR–NYSEArca–2008–90). *See also* Securities Exchange Act Release No. 59010 (November 24,

Continued

pilot was extended and is currently scheduled to expire on September 30, 2011.[8] The terms of the inbound routing pilot are generally set forth in the Commission's approval orders, rather than rule text (except as noted below).[9] The terms of the pilot are as follows:

The Exchange and the Financial Industry Regulatory Authority (''FINRA'') have entered into a Rule 17d–2 agreement pursuant to which FINRA is allocated regulatory responsibilities to review Arca Securities' compliance with certain Exchange rules. The Exchange, however, retains ultimate responsibility for enforcing its rules with respect to Arca Securities.

NYSE Regulation monitors Arca Securities for compliance with the Exchange's trading rules and collects and maintains certain related information. Specifically, NYSE Regulation collects and maintains the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where Arca Securities is identified as a participant that has potentially violated Exchange or applicable SEC rules—in an easily accessible manner so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examination.

NYSE Regulation has agreed with the Exchange that it will provide a report to the Exchange's Chief Regulatory Officer, on a quarterly basis, that (i) Quantifies all alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated Exchange or SEC rules, and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated Exchange or Commission rules.

NYSE Euronext, as parent of the Exchange, was obligated to adopt a rule requiring it to establish and maintain procedures and internal controls reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated ETP Holders of the Exchange.[10]

Since the initiation of the inbound routing pilot in 2008, the Exchange in 2010 entered into a comprehensive Regulatory Services Agreement (''RSA'') with FINRA that, among other things, allocated to FINRA responsibility for the functions noted above that NYSE Regulation previously performed with respect to Arca Securities (*e.g.,* monitoring Arca Securities' compliance with the Exchange's trading rules).[11] As a result of this RSA and the Rule 17d–2 agreement, the only regulatory functions related to Arca Securities that remain with NYSE Regulation are the provision to FINRA of the exceptions noted above of which NYSE Regulation becomes aware (*e.g.,* alerts involving Arca Securities) and the receipt of the quarterly report noted above, which is now produced by FINRA.

Proposed Rule Change

In order to provide more clarity and transparency to all of the functions that Arca Securities performs on behalf of the Exchange, NYSE Arca proposes to add NYSE Arca Equities Rule 7.41 to define the term ''Routing Broker'' and describe the outbound and inbound routing functions. By doing so, the Exchange would establish a single, central location in its Rules describing all routing broker functions, including both outbound and inbound routing. The proposed rule text in Rule 7.41 would be substantially the same as the language set forth in the Commission notices applicable to the Exchange and virtually identical to rule text already implemented for other exchanges.

In this regard, the rule text covering outbound routing would be virtually identical to the NYSE's rule text covering outbound routing by NYSE,[12] and would track the terms of the outbound routing language noted above. In addition, the rule text covering inbound routing would be virtually identical to the BATS' rule text covering inbound routing by BATS, and would track the terms of the inbound routing pilot noted above (and as set forth in the rule filings), with the following exceptions.[13] First, the rule text would reflect that certain regulatory functions are now carried out by FINRA on behalf of NYSE Regulation, rather than by NYSE Regulation directly. Second, the rule text would require procedures and controls that are reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity, based on non-public information regarding planned changes to Exchange systems obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange ETP Holders, in connection with the provision of inbound order routing to the Exchange.[14] In comparison, the current language from the inbound routing pilot requires procedures and controls that are reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange ETP Holders. The Exchange also proposes to include specific rule text to codify the current date upon which the inbound routing pilots are set to expire—September 30, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [15] of the Act, in general, and furthers the objectives of Section 6(b)(5),[16] in particular, in that it 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 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 Exchange believes

2008), 73 FR 73373 (December 2, 2008) (SR–NYSEArca–2008–130).

[8] *See* Securities Exchange Act Release Nos. 60750 (September 30, 2009), 74 FR 51635 (October 7, 2009) (SR–NYSEArca–2009–87) (extending pilot from September 29, 2009 to December 31, 2009); 61247 (December 31, 2009), 75 FR 1096 (January 8, 2010) (SR–NYSEArca–2009–115) (extending pilot from December 31, 2009 to March 31, 2010); 61813 (March 31, 2010), 75 FR 17459 (April 7, 2010) (SR–NYSEArca–2010–19) (extending pilot from March 31, 2010 to September 30, 2010); 62883 (September 2, 2010), 75 FR 55382 (September 10, 2010) (SR–NYSEArca–2010–82) (extending pilot from September 30, 2010 to March 31, 2011); and 64042 (March 2, 2011), 76 FR 13440 (March 8, 2011) (SR–NYSEArca–2011–06) (extending pilot from March 31, 2011 to September 30, 2011).

[9] *See supra* note 9.

[10] *See supra* note 9. *See also* NYSE Arca Equities Rule 14.3(e).

[11] The Exchange notes that FINRA reviews both inbound and outbound routing via Arca Securities pursuant to the 17d–2 agreement and the RSA. The Exchange will review the terms of the RSA in connection with this proposed rule change, and will amend it to reflect the specific terms of this filing.

[12] *See* NYSE Rule 17(c).

[13] *See* BATS Rule 2.12. *See also* Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024).

[14] The Exchange notes that the text proposed in Rule 7.41(c)(2) would make clear that the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other ETP Holder.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

that the proposed rule change, which would add specific rule text for routing functionality that has already been approved in substance by the Commission for the Exchange, would enhance the clarity and transparency surrounding such functionality, including the responsibilities and obligations attendant therewith, while also reflecting the Exchange's ongoing efforts to effectively address the concerns previously identified by the Commission regarding the potential for informational advantages favoring Arca Securities vis-à-vis other non-affiliated NYSE Arca ETP Holders. The Exchange also believes that the proposed rule change would support the principles of Section 11A(a)(1) of the Act[17] in that it seeks to assure economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[20] However, Rule 19b–4(f)(6)(iii)[21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay would provide more clarity and transparency in its rule text concerning all of the functions that Arca Securities performs on behalf of the Exchange without undue delay. In addition, the Exchange notes that the proposal is consistent with the rules of another national securities exchange. For these reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–38 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–NYSEArca–2011–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–38 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16225 Filed 6–28–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78k–1(a)(1).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] *Id.*

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64731; File No. SR–NYSEArca–2011–39]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Text in Its Options Rules Governing the Use of Its Affiliate Broker-Dealer, Archipelago Securities LLC for Outbound Routing of Option Orders, and To Adopt Text in Its Options Rules To Permit the Exchange To Receive Inbound Routes of Option Orders From Arca Securities, Acting as the Outbound Router for NYSE Amex LLC

June 23, 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 June 16, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Arca. 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 (1) To include text in its options rules governing the use of its affiliate broker-dealer, Archipelago Securities LLC (''Arca Securities''), for outbound routing of option orders, and (2) to adopt text in its options rules to permit the Exchange to receive inbound routes of option orders from Arca Securities, acting as the outbound router for NYSE Amex LLC (''NYSE Amex''). The text of the proposed rule change is available at the Exchange's principal office, at *http://www.nyse.com*, at the Commission's Public Reference Room, and at 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to include text in its options rules governing the use of Arca Securities for outbound routing of option orders, and to adopt text in its options rules to permit the Exchange to receive inbound routes of option orders from Arca Securities when it is acting as the outbound router for NYSE Amex.[3] The Exchange notes that it currently uses third-party broker-dealers to route orders to other options exchanges and to have orders routed to it from other options exchanges, including NYSE Amex. In an effort to provide more clarity regarding the functions of Arca Securities and to provide NYSE Arca with the flexibility to use Arca Securities as an outbound and inbound routing broker in the future, the Exchange is filing this proposed rule change.

Background—Authority To Use Arca Securities as Routing Broker

NYSE Arca currently has the authority to use Arca Securities as an outbound router to send option orders to an away market center for execution whenever such routing is required by Exchange Rules and Federal securities laws.[4] As noted above, however, the Exchange does not currently use Arca Securities for this function. The terms of the outbound option order routing function of Arca Securities generally are as follows:

Arca Securities operates and is regulated as a facility of the Exchange, subject to and consistent with Section 6 of the Securities Exchange Act of 1934 (''Act'').

A self-regulatory organization (''SRO'') unaffiliated with the Exchange or any of its affiliates (currently the Financial Industry Regulatory Authority or ''FINRA''), carries out oversight and enforcement responsibilities as the Designated Examining Authority (''DEA'') designated by the Commission pursuant to Rule 17d–1 of the Act with the responsibility for examining Arca Securities for compliance with the applicable financial responsibility rules.

The agreement between the Exchange and FINRA pursuant to Rule 17d–2 under the Act allocates to FINRA the responsibility to receive regulatory reports from Arca Securities, to examine Arca Securities for compliance and to enforce compliance by Arca Securities with the Act, the rules and regulations thereunder and FINRA rules, and to carry out other specified regulatory functions with respect to Arca Securities.

The operation of Arca Securities as a facility of the Exchange providing outbound routing services is subject to Exchange and Commission oversight and the Exchange must file with the Commission rule changes relating to Arca Securities' order routing function.

Proposed Rule Change

The Exchange proposes to include text in its options rules governing the use of Arca Securities for outbound and inbound routing of option orders.[5] In particular, the Exchange proposes to replace the definition of ''OX Routing Broker'' found in Rule 6.1A(a)(15) with the definition currently proposed for the defined term ''Routing Broker'' within NYSE Arca Equities Rule 7.41. This change is designed to provide consistency with respect to rules related to the routing function on the Exchange for equity and option orders.

In addition, the Exchange proposes to adopt in Exchange Rule 6.96(b) [sic] rule text governing the outbound routing function for option orders.[6] This change would set forth in the options rules the conditions for using Arca Securities as the outbound routing broker for option orders for the Exchange.

In addition, the Exchange currently does not have the authority to receive routes of option orders from Arca Securities on behalf of the Exchange's affiliate NYSE Amex.[7] In order to address concern that the Commission has previously expressed regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange hereby proposes to accept inbound option orders that its affiliate, Arca Securities, routes in its capacity as a facility of NYSE Amex, subject to the following limitations and conditions and as reflected in proposed Rule 6.96(b):[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's affiliate, NYSE Amex, is proposing a substantially similar rule change. *See* SR–NYSEAmex–2011–40.

[4] *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR–NYSEArca–2006–13). The terms of the outbound options order routing function for the Exchange are generally set forth in the Commission's approval orders, rather than rule text.

[5] The Exchange notes that the outbound routing function of Arca Securities is only available with respect to orders of OTP Holders.

[6] This proposed rule text is substantially the same as is proposed for outbound equity order routing on the Exchange and, except for certain recently-proposed changes, substantially the same as is currently reflected in Rule 17(c)—NYSE Amex Equities.

[7] NYSE Amex has previously represented that if Arca Securities were to route option orders directly from NYSE Amex to an affiliated market that it would do so only after the affiliated market had rules approved that authorize it to receive such routed option orders from its broker-dealer affiliate. *See* Securities Exchange Act Release No. 59473 (February 27, 2009), 74 FR 9853 (March 6, 2009) (SR–NYSEALTR–2009–18) at note 8.

[8] The Exchange notes that the limitations and conditions proposed herein would be substantially the same as those applicable to the Exchange's current pilot program to accept routes of inbound equity orders by Arca Securities, on behalf of the Exchange's affiliates NYSE Amex and New York Stock Exchange, LLC (''NYSE''). *See* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (SR–NYSEArca–2008–90). *See also* Securities Exchange

• First, the Exchange will (1) Maintain an agreement pursuant to Rule 17d–2 under the Exchange Act with a non-affiliated SRO (presently the Financial Industry Regulatory Authority (''FINRA'')) to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (2) maintain a regulatory services agreement with a non-affiliated SRO (presently FINRA) to perform regulatory responsibilities for Arca Securities for unique Exchange rules.[9]

• Second, the regulatory services agreement discussed above will require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively ''Exceptions'') in which Arca Securities is identified as a participant that has potentially violated Exchange or SEC Rules and of which the Exchange becomes aware, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which Arca Securities is identified as a participant that has potentially violated Exchange or SEC Rules.

• Third, the Exchange, on behalf of the holding company owning both the Exchange and Arca Securities, will establish and maintain procedures and internal controls reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated OTP Holders in connection with the provision of inbound order routing to the Exchange.

• Fourth, the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other OTP Holder.

• Fifth, the inbound routing functionality would operate pursuant to a pilot program that would end on September 30, 2011.

The proposed text within Rule 6.96(b) corresponding to these limitations and conditions would be substantially the same as the language set forth in the Commission orders applicable to the Exchange, as described above, and virtually identical to the inbound router rule text already implemented for another exchange.[10] The Exchange proposes that the operation of the inbound routing function would cover all types of option orders approved for use on NYSE Amex.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[11] of the Act, in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it 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 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 Exchange believes that the proposed rule change, which in part would add specific rule text for routing functionality that has already been approved in substance by the Commission for the Exchange, would enhance the clarity and transparency surrounding such functionality, including the responsibilities and obligations attendant therewith, while also reflecting the Exchange's ongoing efforts to effectively address the concerns previously identified by the Commission regarding the potential for informational advantages favoring Arca Securities vis-à-vis other non-affiliated Exchange OTP Holders. The Exchange also believes that the proposed rule change would support the principles of Section 11A(a)(1) of the Act[13] in that it seeks to assure economically efficient execution of securities transactions.

Additionally, the Exchange believes that the proposal to permit the Exchange to receive inbound routes of option orders from Arca Securities, acting as the outbound router for NYSE Amex, is consistent with previous Commission orders authorizing the Exchange to receive inbound routes of equity orders from Arca Securities on behalf of the Exchange's affiliate exchanges, NYSE and NYSE Amex. Furthermore, by including rule text governing both outbound and inbound routing in proposed Rule 6.96, the Exchange would establish a single, central location in its Rules describing all option order routing broker functions. Additionally, the proposed amendments to align the definition of Routing Broker in the Exchange's equity and option rules would result in greater consistency in defined terms on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[16] However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to

Act Release No. 59010 (November 24, 2008), 73 FR 73373 (December 2, 2008) (SR–NYSEArca–2008–130). The Exchange notes that it has proposed specific rule text for this inbound equity routing functionality, the terms of which are currently generally set forth in the Commission's approval orders, rather than rule text, and have already been approved in substance by the Commission for the Exchange.

[9] The Exchange notes that FINRA reviews both inbound and outbound routing via Arca Securities pursuant to an existing 17d–2 agreement and an existing regulatory services agreement. The Exchange will review the terms of the regulatory services agreement in connection with this proposed rule change, and will amend it to reflect the specific terms of this filing.

[10] *See* BATS Rule 2.12. *See also* Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] *Id.*

designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay would provide more clarity and transparency in its rule text concerning all of the functions that Arca Securities performs on behalf of the Exchange without undue delay. In addition, the Exchange notes that the proposal is consistent with the rules of another national securities exchange. For these reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSEArca–2011–39 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–NYSEArca–2011–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–39 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16227 Filed 6–28–11; 8:45 am]

BILLING CODE 8011–01–P

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64732; File No. SR–NYSEAmex–2011–40]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Text in Its Options Rules Governing the Use of Its Affiliate Broker-Dealer, Archipelago Securities LLC for Outbound Routing of Option Orders, and To Adopt Text in Its Options Rules To Permit the Exchange To Receive Inbound Routes of Option Orders From Arca Securities, Acting as the Outbound Router for NYSE Arca, Inc.

June 23, 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 June 16, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes (1) To include text in its options rules governing the use of its affiliate broker-dealer, Archipelago Securities LLC (''Arca Securities''), for outbound routing of option orders, and (2) to adopt text in its options rules to permit the Exchange to receive inbound routes of option orders from Arca Securities, acting as the outbound router for NYSE Arca, Inc. (''NYSE Arca''). The text of the proposed rule change is available at the Exchange's principal office, at *http://www.nyse.com,* at the Commission's Public Reference Room, and at 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to include text in its options rules governing the use of Arca Securities for outbound routing of option orders, and to adopt text in its options rules to permit the Exchange to receive inbound routes of option orders from Arca Securities when it is acting as the outbound router for NYSE Arca.[3] The Exchange notes that it currently uses third-party broker-dealers to route orders to other options exchanges and to have orders routed to it from other options exchanges,

[3] The Exchange's affiliate, NYSE Arca, is proposing a substantially similar rule change. *See* SR–NYSEArca–2011–39.

including NYSE Arca. In an effort to provide more clarity regarding the functions of Arca Securities and to provide NYSE Amex with the flexibility to use Arca Securities as an outbound and inbound routing broker in the future, the Exchange is filing this proposed rule change.

Background—Authority To Use Arca Securities as Routing Broker

NYSE Amex currently has the authority to use Arca Securities as an outbound router to send option orders to an away market center for execution whenever such routing is required by Exchange Rules and Federal securities laws. As noted above, however, the Exchange does not currently use Arca Securities for this function. The rules providing for this authority are found in the Exchange's equities rules. In particular, Rule 13—NYSE Amex Equities defines the term ''Routing Broker,'' and Rule 17(c)—NYSE Amex Equities sets forth the conditions for the operation of a Routing Broker.[4] These rules do not currently provide NYSE Amex with the authority to have inbound option orders routed to it by Arca Securities on behalf of NYSE Arca.

Proposed Rule Change

The Exchange proposes to include text in its options rules governing the use of Arca Securities for outbound routing of option orders.[5] This rule text is substantially the same as the rule text in Rule 13—NYSE Amex Equities and Rule 17(c)—NYSE Amex Equities. In particular, the Exchange proposes to replace the definition of ''Routing Broker'' found in NYSE Amex Rule 900.2NY(69) with the definition of that term found in Rule 13—NYSE Amex Equities. This change is designed to provide consistency with respect to rules related to the routing function on the Exchange for equity and option orders. In addition, the Exchange proposes to adopt in NYSE Amex Rule 993NY(a) the text from Rule 17(c)—NYSE Amex Equities. This change would set forth in the options rules the conditions for using Arca Securities as the outbound routing broker for option orders for the Exchange.

In addition, the Exchange has previously represented that if Arca Securities were to route option orders directly from the Exchange to an affiliated market that it would do so only after the affiliated market had rules approved that authorize it to receive such routed option orders from its broker-dealer affiliate.[6] The Exchange further recognizes that the same would be true in order for the Exchange to receive routes of option orders from Arca Securities on behalf of the Exchange's affiliate NYSE Arca. In order to address concern that the Commission has previously expressed regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange hereby proposes to accept inbound option orders that its affiliate, Arca Securities, routes in its capacity as a facility of NYSE Arca, subject to the following limitations and conditions and as reflected in proposed Rule 993NY(b).[7]

- First, the Exchange will (1) Maintain an agreement pursuant to Rule 17d–2 under the Exchange Act with a non-affiliated self-regulatory organization (''SRO'') (presently the Financial Industry Regulatory Authority (''FINRA'')) to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (2) maintain a regulatory services agreement with a non-affiliated SRO (presently FINRA) to perform regulatory responsibilities for Arca Securities for unique Exchange rules.[8]
- Second, the regulatory services agreement discussed above will require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively ''Exceptions'') in which Arca Securities is identified as a participant that has potentially violated Exchange or SEC Rules and of which the Exchange becomes aware, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which Arca Securities is identified as a participant that has potentially violated Exchange or SEC Rules.
- Third, the Exchange, on behalf of the holding company owning both the Exchange and Arca Securities, will establish and maintain procedures and internal controls reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated ATP Holders in connection with the provision of inbound order routing to the Exchange.
- Fourth, the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other ATP Holder.
- Fifth, the inbound routing functionality would operate pursuant to a pilot program that would end on September 30, 2011.

The proposed text within Rule 993NY(b) corresponding to these limitations and conditions would be substantially the same as the language set forth in the Commission orders applicable to the Exchange, as described above, and virtually identical to the inbound router rule text already implemented for another exchange.[9] The Exchange proposes that the operation of the inbound routing function would cover all types of option orders approved for use on NYSE Arca.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the

[4] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63). Rules 13 and 17—NYSE Amex Equities permit not only Arca Securities but also unaffiliated third-party broker-dealers to perform the outbound routing function, which serves as a risk management function in the event of a system malfunction or failure. As such, Rule 17—NYSE Amex Equities currently refers generically to ''Routing Broker(s),'' rather than just Arca Securities.

[5] The Exchange notes that the outbound routing function of Arca Securities is only available with respect to orders of ATP Holders.

[6] *See* Securities Exchange Act Release No. 59473 (February 27, 2009), 74 FR 9853 (March 6, 2009) (SR–NYSEALTR–2009–18), at note 8.

[7] The Exchange notes that the limitations and conditions proposed herein would be substantially the same as those applicable to the Exchange's current pilot program to accept routes of inbound equity orders by Arca Securities, on behalf of the Exchange's affiliates NYSE Arca and New York Stock Exchange, LLC (''NYSE''). *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62). *See also* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63). The Exchange notes that it has proposed specific rule text for this inbound equity routing functionality, the terms of which are currently generally set forth in the Commission's approval orders, rather than rule text, and have already been approved in substance by the Commission for the Exchange.

[8] The Exchange notes that FINRA reviews both inbound and outbound routing via Arca Securities pursuant to an existing 17d–2 agreement and an existing regulatory services agreement. The Exchange will review the terms of the regulatory services agreement in connection with this proposed rule change, and will amend it to reflect the specific terms of this filing.

[9] *See* BATS Rule 2.12. *See also* Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024).

[10] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5),[11] in particular, in that it 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 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 Exchange believes that the proposed rule change, which in part would add specific rule text for routing functionality that has already been approved in substance by the Commission for the Exchange, would enhance the clarity and transparency surrounding such functionality, including the responsibilities and obligations attendant therewith, while also reflecting the Exchange's ongoing efforts to effectively address the concerns previously identified by the Commission regarding the potential for informational advantages favoring Arca Securities vis-à-vis other non-affiliated Exchange ATP Holders. The Exchange also believes that the proposed rule change would support the principles of Section 11A(a)(1) of the Act[12] in that it seeks to assure economically efficient execution of securities transactions.

Additionally, the Exchange believes that the proposal to permit the Exchange to receive inbound routes of option orders from Arca Securities, acting as the outbound router for NYSE Arca, is consistent with previous Commission orders authorizing the Exchange to receive inbound routes of equity orders from Arca Securities on behalf of the Exchange's affiliate exchanges, NYSE and NYSE Arca. Furthermore, by including rule text governing both outbound and inbound routing in proposed Rule 993NY, the Exchange would establish a single, central location in its Rules describing all option order routing broker functions. Additionally, the proposed amendments to align the definition of Routing Broker in the Exchange's equity and option rules would result in greater consistency in defined terms on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[15] However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay would provide more clarity and transparency in its rule text concerning all of the functions that Arca Securities performs on behalf of the Exchange without undue delay. In addition, the Exchange notes that the proposal is consistent with the rules of another national securities exchange. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–40 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–NYSEAmex–2011–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] *Id.*

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

NYSEAmex–2011–40 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16228 Filed 6–28–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64735; File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64]

Self-Regulatory Organizations; BATS Exchange, Inc.; BATS Y-Exchange, Inc.; NASDAQ OMX BX, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; The NASDAQ Stock Market LLC; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; National Stock Exchange, Inc.; NASDAX OMX PHLX LLC; Order Approving Proposed Rule Changes Relating To Expanding the Pilot Rule for Trading Pauses Due to Extraordinary Market Volatility to All NMS Stocks

June 23, 2011.

I. Introduction

On May 4, 2011 and May 5, 2011, each of BATS Exchange, Inc. (''BATS''), BATS Y–Exchange, Inc. (''BYX''), NASDAQ OMX BX, Inc. (''BX''), Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc. (''CHX''), EDGA Exchange, Inc (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), NYSE Arca, Inc. (''NYSE Arca''), National Stock Exchange, Inc. (''NSX''), and NASDAX OMX PHLX LLC (''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b-4 thereunder,[3] proposed rule changes to amend certain of their respective rules to expand the trading pause pilot in individual stocks to include all remaining NMS stocks, but to require wider percentage price moves before a trading pause is triggered for the newly added securities.[4] The current trading pause pilot applies only to securities that are included in the S&P 500® Index (''S&P 500''), the Russell 1000® Index (''Russell 1000'') or a select group of Exchange Traded Products (''ETPs'').[5] The proposed rule changes were published for comment in the **Federal Register** on May 12, 2011.[6] The Commission received no comments on the proposed rule changes. On June 20, 2011 and June 21, 2011, the Exchanges and FINRA filed amendments to their respective proposed rule changes.[7] This order approves the proposed rule changes, as amended.

II. Description of the Proposals

On May 6, 2010, the U.S. equity markets experienced a severe disruption.[8] Among other things, the prices of a large number of individual securities suddenly declined by significant amounts in a very short time period, before suddenly reversing to prices consistent with their pre-decline levels. This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices and were broken by the Exchanges and FINRA. The Commission is concerned that events such as those that occurred on May 6 can seriously undermine the integrity of the U.S. securities markets. Accordingly, it has worked over the past year to identify and assess the causes and contributing factors of the May 6 market disruption[9] and to fashion policy responses that will help prevent a recurrence.[10]

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The term ''Exchanges'' shall refer collectively to all of the national securities exchanges in this order.

NMS stock means any NMS security other than an option. *See* 17 CFR 242.600(47). NMS security means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. *See* 17 CFR 242.600(46).

[5] On May 6, 2011, Phlx filed an amendment to its proposed rule change. *See* Amendment No. 1 to SR–Phlx–2011–64 (noting that the proposed rule change was approved by the Board of Directors of Phlx on May 6, 2011). Amendment No. 1 to SR–Phlx–2011–64 is a technical amendment and is not subject to notice and comment.

[6] *See* Securities Exchange Act Release Nos. 64435 (May 6, 2011), 76 FR 27684 (May 12, 2011); 64433 (May 6, 2011), 76 FR 27680 (May 12, 2011); 64427 (May 6, 2011), 76 FR 27704 (May 12, 2011); 64434 (May 6, 2011), 76 FR 27687 (May 12, 2011); 64431 (May 6, 2011), 76 FR 27683 (May 12, 2011); 64432 (May 6, 2011), 76 FR 27701 (May 12, 2011); 64428 (May 6, 2011), 76 FR 27702 (May 12, 2011); 64424 (May 6, 2011), 76 FR 27707 (May 12, 2011); 64423 (May 6, 2011), 76 FR 27677 (May 12, 2011); 64426 (May 6, 2011), 76 FR 27678 (May 12, 2011); 64420 (May 6, 2011), 76 FR 27675 (May 12, 2011); 64421 (May 6, 2011), 76 FR 27708 (May 12, 2011); 64422 (May 6, 2011), 76 FR 27691 (May 12, 2011); 64425 (May 6, 2011), 76 FR 27689 (May 12, 2011); 64419 (May 6, 2011), 76 FR 27678 (May 12, 2011).

[7] *See* Amendment No. 1 to SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; and SR–NSX–2011–06 and Amendment No. 2 to SR–Phlx–2011–64 (collectively, the ''Implementation Date Amendments''). The Implementation Date Amendments propose an implementation date of August 8, 2011 for the proposed rule changes. In addition, Amendment No. 1 to the Nasdaq filing corrects a typographical error in a cross-reference in the proposed rule text. The Implementation Date Amendments are technical amendments and are not subject to notice and comment.

[8] The events of May 6 are described more fully in the report of the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission, *See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues,* ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010.

[9] *Id.*

[10] In addition to the trading pause pilot for individual securities, thirteen of the Exchanges and FINRA filed a proposed NMS Plan to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS stocks. *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631) (Notice of Filing of a National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca, Inc.) (''Proposed Limit Up-Limit Down NMS Plan''). As discussed further below, the trading pause pilot would terminate on the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies. The Commission also approved proposed rule changes that set forth clearer standards and reduced the discretion of self-regulatory organizations with respect to breaking erroneous trades. *See e.g.,* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010). Further, the Commission approved proposed rule changes that enhanced the minimum quoting standards for equity market makers to require that they post continuous two-sided quotations within a designated percentage of the inside market to eliminate market maker ''stub quotes'' that are so far away from the prevailing market that they are not intended to be executed. *See* Securities Exchange Act Release No. 63255 (November 5,

Continued

On June 10, 2010, the Commission granted accelerated approval for proposed rule changes by the Exchanges and FINRA to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[11] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add securities included in the Russell 1000, as well as specified ETPs, to the pilot.[12]

The rules require the primary listing market for a security (''Listing Market'') to issue a five-minute trading pause if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Market is required to notify the other Exchanges, FINRA and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the Consolidated Tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges and FINRA are required to pause trading in the security on their markets.

At the end of the five-minute pause, the Listing Market reopens trading in the security in accordance with its procedures for doing so. Trading resumes on other Exchanges and in the over-the-counter market once trading has resumed on the Listing Market. In the event of a significant imbalance on the Listing Market at the end of the trading pause, the Listing Market may delay reopening. If the Listing Market has not reopened within ten minutes from the initiation of the trading pause, however, the other Exchanges and FINRA may resume trading.[13]

Under the current proposal (the ''Phase III Circuit Breaker Pilot''), the Exchanges and FINRA propose to include all remaining NMS stocks (''Phase III securities'') in the existing pilot program shortly after the Commission approves the proposed rule changes.[14] The Exchanges and FINRA believe that adding these securities to the pilot would have the beneficial effect of applying the circuit breaker's protections against excessive volatility to a larger group of securities, while at the same time allowing the opportunity, during the pilot period, for continued review of the operation of the circuit breaker and an assessment of whether the parameters should be further expanded or modified.

In addition, the Exchanges and FINRA propose that, for Phase III securities, the price move required to trigger a trading pause shall be 30% or more for such securities priced at $1 or higher, and 50% or more for such securities priced less than $1.[15] The Exchanges and FINRA believe that these percentages are commensurate with the characteristics shared by the Phase III securities within the applicable range given that the proposed additional stocks are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchanges and FINRA believe that broader price move percentages would be appropriate for the Phase III securities, and would promote the objectives of the pilot by reducing the negative impact of unanticipated price movements in a security. The Exchanges and FINRA believe that applying a broader percentage to securities priced less than $1 compared to those priced above $1 is appropriate given that lower-priced securities may tend to be more volatile, and price movements of lower-priced securities equate to a higher percentage move than a similar price change for a higher-priced security.

The Exchanges and FINRA also propose to adjust the market maker quoting requirements, as necessary, to assure they remain within a narrower range than the new thresholds. Currently, market makers may fulfill their quoting obligations by maintaining a quote 30% away from the National Best Bid and Offer (''NBBO'') in a security that is not included in the S&P 500, Russell 1000, or in the list of ETPs. Accordingly, the Exchanges and FINRA [16] propose to revise this quoting obligation for Phase III securities trading at or above $1 (for which the proposed trading pause trigger is 30%) to 28% away from the NBBO. The quoting obligation for Phase III securities trading below $1 (which would be subject to the 50% threshold) would remain unchanged.

III. Discussion and Commission Findings

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the proposals submitted by the Exchanges are consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of national securities exchanges be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[18]

Additionally, the Commission finds that the FINRA proposal is consistent with Section 15A(b)(6) of the Act,[19] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and

2010), 75 FR 69484 (November 12, 2010). In addition, the Commission proposed the creation of a large trader reporting system that would enhance its ability to identify large market participants, collect information on their trades, and analyze their trading activity. *See* Securities Exchange Act Release No. 61908 (April 14, 2010, 75 FR 21456 (April 23, 2010). The Commission also proposed a new rule that would require SROs to establish a consolidated audit trail system that would enable regulators to track information related to trading orders received and executed across the securities markets. *See* Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010).

[11] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[12] *See e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

The Exchanges and FINRA submitted proposed rule changes shortly after the addition of the Russell 1000 securities and ETPs to extend the operation of the pilot, which was set to expire on December 10, 2010, until April 11, 2011. *See e.g.,* Securities Exchange Act Release No. 63497 (December 9, 2010), 75 FR 78315 (December 15, 2010). More recently, the Exchanges and FINRA submitted proposed rule changes to extend the operation of the pilot until the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies. *See e.g.,* Securities Exchange Act Release No. 64207 (April 6, 2011), 76 FR 20424 (April 12, 2011). The Commission understands that the Exchanges and FINRA intend to propose a further extension of the pilot.

[13] For more details on the operation of the Exchanges' and FINRA's rules, *see supra* notes 6 and 11.

[14] Specifically, the Exchanges and FINRA propose to implement the Phase III Circuit Breaker Pilot on August 8, 2011. *See supra* note 7.

[15] Under the proposed rule changes, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

[16] Only those SROs with market makers (*i.e.,* BATS, BYX, BX, CBOE, CHX, FINRA, Nasdaq, NSX, NYSE, NYSE Amex, and NYSE Arca) proposed this change to the market maker quoting requirements.

[17] 15 U.S.C. 78f(b)(5).

[18] In approving the proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78*o*–3(b)(6).

practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also believes that the proposals submitted by the Exchanges and FINRA are consistent with Section 11A(a)(1) of the Act [20] in that they seek to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule changes will expand the trading pause pilot to include all remaining NMS stocks, but will apply wider price move percentages to the newly added securities to reflect their general higher volatility, lower liquidity, and other trading characteristics. The Commission believes that the proposed trigger percentages of 30% and 50% are reasonable and appropriate for the purposes of the pilot. The Commission also believes that expanding the market-wide trading pauses to include all remaining NMS stocks will serve to reduce the risk of potentially destabilizing price volatility and thereby help promote the goals of investor protection and fair and orderly markets. Further, expanding the pilot will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

Finally, on April 5, 2011, thirteen of the Exchanges and FINRA filed a proposed NMS Plan to create a market-wide limit up-limit down mechanism to address extraordinary market volatility in NMS stocks. By its terms, the circuit breaker pilot will expire on the earlier of August 11, 2011, or the date on which this limit up-limit down mechanism, if approved by the Commission, applies.[21]

The Commission also believes that the proposed change to the market maker quoting obligations is consistent with the Act. This aspect of the proposal would adjust the market maker quoting obligations to assure they remain within a narrower range than the new trading pause percentage thresholds for Phase III securities, which is consistent with the original design of the market maker quoting obligations.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule changes (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) be, and hereby are, approved, as amended.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16229 Filed 6–28–11; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78k–1(a)(1).

[21] *See supra* notes 10 and 12.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64736; File No. SR–FINRA–2011–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook

June 23, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 10, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) 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 FINRA. 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

FINRA is proposing to adopt the consolidated FINRA supervision rules. Specifically, the proposed rule change would: (1) Adopt FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) to replace NASD Rules 3010 (Supervision) and 3012 (Supervisory Control System), respectively; (2) incorporate into FINRA Rule 3110 and its supplementary material the requirements of NASD IM–1000–4 (Branch Offices and Offices of Supervisory Jurisdiction), NASD IM–3010–1 (Standards for Reasonable Review), Incorporated NYSE Rule 401A (Customer Complaints), and Incorporated NYSE Rule 342.21 (Trade Review and Investigation); (3) replace NASD Rule 3010(b)(2) (often referred to as the ''Taping Rule'') with new FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms); (4) replace NASD Rule 3010(e) (Qualifications Investigated) with new FINRA Rule 1260 (Responsibility of Member to Investigate Applicants for Registration); (5) replace NASD Rule 3110(i) (Holding of Customer Mail) with new FINRA Rule 3150 (Holding of Customer Mail); and (6) delete the following NASD and Incorporated NYSE Rules and NYSE Rule Interpretations: (i) NASD Rule 3010(f) (Applicant's Responsibility); (ii) NYSE Rule 342 (Offices—Approval, Supervision and Control) and related NYSE Rule Interpretations; (iii) NYSE Rule 343 (Offices—Sole Tenancy, and Hours) and related NYSE Rule Interpretations; (iv) NYSE Rule 351(e) (Reporting Requirements) and NYSE Rule Interpretation 351(e)/01 (Reports of Investigation); (v) NYSE Rule 354 (Reports to Control Persons); and (vi) NYSE Rule 401 (Business Conduct).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and for Web site viewing and printing 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, FINRA 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. FINRA 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

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from the NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the

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FINRA is proposing to adopt new FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) and to delete NASD Rule 3010 (Supervision) and NASD Rule 3012 (Supervisory Control System), on which they are largely based. The proposed rule change also would delete Incorporated NYSE Rule 342 and much of its supplementary material and interpretations as they are, in main part, either duplicative of, or do not align with, the proposed supervision requirements. The proposed rule change, however, does incorporate—on a tiered basis—certain provisions from Incorporated NYSE Rule 342. The details of the proposed rule change are described below.

(1) Proposed FINRA Rule 3110 (Supervision)

Proposed FINRA Rule 3110 is based primarily on existing requirements in NASD Rule 3010 and Incorporated NYSE Rule 342 relating to, among other things, supervisory systems, written procedures, internal inspections, and review of correspondence. Proposed FINRA Rule 3110 also incorporates provisions in other NASD rules that pertain to supervision, including NASD Rule 3012.

(A) Proposed FINRA Rule 3110(a) (Supervisory System) and Proposed Supplementary Material .01 [4]

Proposed FINRA Rule 3110(a) requires a member to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with the applicable securities laws and regulations and FINRA and Municipal Securities Rulemaking Board (''MSRB'') rules. The proposed rule provision is substantially similar to NASD Rule 3010(a) except for two revisions. First, proposed FINRA Rule 3110(a) refers only to associated persons instead of the current reference in NASD Rule 3010(a) to each ''registered representative, registered principal, and other associated person.'' Second, proposed FINRA Rule 3110(a) requires a member's supervisory system to be reasonably designed to achieve compliance with MSRB rules, which NASD Rule 3010(a) does not explicitly reference.[5]

Proposed Supplementary Material .01 (Business Lines) provides that for a member's supervisory system required by proposed FINRA Rule 3110(a) to be reasonably designed to achieve compliance with FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), it must include supervision for all of the member's business lines irrespective of whether they require broker-dealer registration.

(i) Proposed FINRA Rule 3110(a)(1)

Proposed FINRA Rule 3110(a)(1), which is identical to NASD Rule 3010(a)(1), requires a member's supervisory system to include the establishment and maintenance of written procedures.

(ii) Proposed FINRA Rule 3110(a)(2): Designated Principal

Proposed FINRA Rule 3110(a)(2), which is identical to NASD Rule 3010(a)(2), requires a member's supervisory system to include the designation of an appropriately registered principal(s) with authority to carry out the supervisory responsibilities for each type of business in which the member engages for which registration as a broker-dealer is required.

(iii) Proposed FINRA Rule 3110(a)(3) and Proposed Supplementary Material .02–.03

Proposed FINRA Rule 3110(a)(3) requires the registration and designation as a branch office and/or an office of supervisory jurisdiction (''OSJ'') of each location, including the main office, as those terms are defined in the proposed rule. Proposed FINRA Rule 3110(a)(3) is based on similar provisions in NASD Rule 3010(a)(3). In addition, the proposed rule provision and proposed Supplementary Material .02 (Registration of Main Office) incorporate the requirement in NASD IM–1000–4 (Branch Offices and Offices of Supervisory Jurisdiction) that all branch offices and OSJs must be registered as either a branch office or OSJ, respectively. FINRA is deleting NASD IM–1000–4 as part of this proposed rule change.

Additionally, the proposed rule change moves, with no substantive changes, the provisions in NASD Rule 3010(a)(3) setting forth certain factors a member should consider in designating additional locations as OSJs into proposed Supplementary Material .03 (Designation of Additional OSJs).

(iv) Proposed FINRA Rule 3110(a)(4) and Proposed Supplementary Material .04–.05

Proposed FINRA Rule 3110(a)(4) requires a member to designate one or more appropriately registered principals in each OSJ and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the member. This proposed provision replaces the nearly identical provision in NASD Rule 3010(a)(4) with a minor editorial change to delete the phrase ''including the main office,'' from the rule text.

Supplementary Material .04 (One-Person OSJs) codifies existing guidance on the supervision of one-person OSJs. Specifically, the proposed supplementary material clarifies the core concept that the on-site principal in a one-person OSJ location cannot supervise his or her own activities if such principal is authorized to engage in business activities other than the supervision of associated persons or other offices as enumerated in proposed FINRA Rule 3110(e)(1)(D) through (G). Proposed Supplementary Material .04 also provides that, in such instances, the on-site principal must be under the close supervision and control of another appropriately registered principal (''senior principal''). The senior principal is responsible for supervising the activities of the on-site principal at such office and must conduct on-site supervision of such OSJ on a regular periodic schedule determined by the member. The proposed supplementary material requires a member to consider, among other factors, the nature and complexity of the securities activities for which the location is responsible, the nature and extent of contact with customers, and the disciplinary history of the on-site principal in determining this schedule.

Proposed Supplementary Material .05 (Supervision of Multiple OSJs by a Single Principal) clarifies the requirement in proposed Rule 3110(a)(4) to designate an on-site principal in each OSJ with authority to carry out the supervisory responsibilities assigned to that office. Such on-site principal must have a physical presence, on a regular and routine basis, at the OSJ for which the principal has supervisory responsibilities. The proposed

rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] FINRA published the proposed rules for comment in *Regulatory Notice* 08–24 (May 2008). In response to comments, FINRA, among other things, has added new proposed Supplementary Material .01 (Business Lines) to proposed FINRA Rule 3110; this amendment to the proposal has resulted in a change in numbering of all subsequent supplementary material to proposed FINRA Rule 3110. For ease of reference, the proposed rule change employs the new proposed numbers in all instances.

[5] In this regard, SEC staff has confirmed FINRA staff's view that a violation of the MSRB rules also would be a violation of the Federal securities laws, as it would constitute a violation of Exchange Act Section 15B(c)(1). *See Letter from James L. Eastman, Chief Counsel and Associate Director, Division of Trading and Markets, SEC, to Patrice M. Gliniecki, Senior Vice President and Deputy General Counsel, FINRA (March 17, 2009).*

supplementary material establishes a general presumption that a principal will not be assigned to supervise more than one OSJ and sets forth factors members should consider in making a determination regarding whether a single principal can supervise more than one OSJ. Where a member determines to assign one principal to supervise more than one OSJ, the member must document the factors it considered. There is a further general presumption that a determination by a member to assign one principal to supervise more than two OSJs is unreasonable. If a member determines to designate and assign one principal to supervise more than two OSJs, the proposed supplementary material provides that such determination will be subject to greater scrutiny, and the member will have a greater burden to evidence the reasonableness of such structure.

(v) Proposed FINRA Rule 3110(a)(5) through (7) and Proposed Supplementary Material .06

Proposed FINRA Rule 3110(a)(5) requires that each registered person be assigned to an appropriately registered representative(s) and/or principal(s) who is responsible for supervising that person's activities. Proposed FINRA Rule 3110(a)(6) requires a member to use reasonable efforts to determine that all supervisory personnel have the necessary experience or training to be qualified to carry out their assigned responsibilities. Proposed FINRA Rule 3110(a)(7) requires each registered representative and registered principal to participate, at least once each year, in an interview or meeting at which compliance matters relevant to the particular representative or principal are discussed. These proposed provisions replace the nearly identical provisions in NASD Rule 3010(a)(5) through (7) with only minor editorial changes.

Proposed Supplementary Material .06 (Annual Compliance Meeting) codifies existing guidance that a member is not required to conduct in-person meetings with each registered person or groups of registered persons to comply with the annual compliance meetings required by proposed FINRA Rule 3110(a)(7).[6] However, a member that chooses to conduct meetings using other methods (*e.g.,* on-demand Web cast, video conference, interactive classroom setting, telephone, or other electronic means) must ensure, at a minimum, that each registered person attends the entire meeting (*e.g.,* an on-demand annual compliance Web cast would require each registered person to use a unique user ID and password to gain access and use a technology platform to track the time spent on the Web cast, provide click-as-you-go confirmation, and have an attestation of completion at the end of a Web cast) and is able to ask questions regarding the presentation and receive answers in a timely fashion (*e.g.,* an on-demand annual compliance Web cast that allows registered persons to ask questions via an e-mail to a presenter or a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the member's intranet site).

(B) Proposed FINRA Rule 3110(b) (Written Procedures)

FINRA proposes to consolidate various provisions and rules that currently require written procedures into proposed FINRA Rule 3110(b), including provisions from NASD Rule 3010(d)(1) relating to the supervision of registered representatives and Incorporated NYSE Rule 401A (Customer Complaints) relating to the review of customer complaints. In addition, proposed supplementary material, which is discussed in detail below, codifies and expands guidance in these areas.

(i) Proposed FINRA Rule 3110(b)(1) (General Requirements)

Proposed FINRA Rule 3110(b)(1) requires a member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, FINRA rules, and MSRB rules. The proposed rule provision is substantially similar to NASD Rule 3010(b)(1) except for two revisions that mirror changes in proposed FINRA Rule 3110(a). First, proposed FINRA Rule 3110(b)(1) refers only to associated persons instead of the current reference in NASD Rule 3010(b)(1) to ''registered representatives, registered principals, and other associated persons.'' Second, FINRA Rule 3110(b)(1) requires a member's written supervisory procedures to be reasonably designed to achieve compliance with MSRB rules, which NASD Rule 3010(b)(1) does not explicitly reference.[7]

(ii) Proposed FINRA Rule 3110(b)(2) (Review of Member's Investment Banking and Securities Business) and Proposed Supplementary Material .07

FINRA is retaining the provision in NASD Rule 3010(d)(1) requiring principal review, evidenced in writing, of all transactions, but is relocating the provision to proposed FINRA Rule 3110(b)(2). FINRA is also proposing to amend the provision to clarify that such review includes all transactions relating to the member's investment banking or securities business. Proposed Supplementary Material .07 (Risk-based Review of Member's Investment Banking and Securities Business) permits a member to use a risk-based system to review these transactions.

(iii) Proposed FINRA Rule 3110(b)(3)

FINRA is reserving this provision for future rulemaking.[8]

(iv) Proposed FINRA Rule 3110(b)(4) (Review of Correspondence and Internal Communications) and Proposed Supplementary Material .08–.11

Proposed FINRA Rule 3110(b)(4) generally incorporates the substance of NASD Rule 3010(d) (Review of Transactions and Correspondence) requiring members to have supervisory procedures for the review of correspondence. In addition, the proposed provision and proposed related supplementary material incorporate certain existing guidance regarding the supervision of electronic communications in *Regulatory Notice* 07–59 (December 2007).

Specifically, proposed FINRA Rule 3110(b)(4) requires that a member have supervisory procedures for the review of the member's incoming and outgoing written (including electronic) correspondence with the public and internal communications that relate to its investment banking or securities business. Proposed Supplementary Material .08 (Risk-based Review of Correspondence and Internal Communications), however, permits a member to use risk-based review principles to review much of its incoming and outgoing correspondence with the public and internal communications.

The proposed rule also requires a member to identify and handle in

[6] *See Notice to Members* 99–45 (June 1999).

[7] *See supra* note 5.

[8] As noted in *Regulatory Notice* 08–24, FINRA proposed to delete NASD Rule 3040 (Private Securities Transactions of an Associated Person) and replace it with FINRA Rule 3110(b)(3) (Supervision of Outside Securities Activities) and proposed Supplementary Material .07 (Reliance on Bank or Affiliated Entity to Supervise Dual Employees). FINRA, however, has determined to address NASD Rule 3040 as a separate proposal.

accordance with the firm's procedures: Customer complaints, instructions, and funds and securities, and communications that are of a subject matter that require review under FINRA and MSRB rules and the Federal securities laws. Those communications include (without limitation):

- Communications between non-research and research departments concerning a research report's contents (NASD Rule 2711(b)(3) and Incorporated NYSE Rule 472(b)(3));
- Certain communications with the public that require a principal's pre-approval (NASD Rules 2210 and 2211);
- The identification and reporting to FINRA of customer complaints (NASD Rule 3070(c) and Incorporated NYSE Rule 351(d)); [9] and
- The identification and prior written approval of every order error and other account designation change (NASD Rule 3110(j) and Incorporated NYSE Rule 410).[10]

Proposed FINRA Rule 3110(b)(4) also requires that a registered principal review correspondence with the public and internal communications and evidence those reviews in writing (either electronically or on paper). However, proposed Supplementary Material .10 (Delegation of Correspondence and Internal Communication Review Functions) allows a supervisor/principal to delegate review functions to an unregistered person; however, the supervisor/principal remains ultimately responsible for the performance of all necessary supervisory reviews.

Proposed Supplementary Material .09 (Evidence of Review of Correspondence and Internal Communications) codifies existing FINRA guidance that merely opening a communication is not sufficient review.[11] Instead, a member must identify what communication was reviewed, the identity of the reviewer, the date of review, and the actions taken by the member as a result of any significant regulatory issues identified during the review.

Finally, proposed Supplementary Material .11 (Retention of Correspondence and Internal Communications) requires a member to retain its internal communications and correspondence of associated persons relating to the member's investment banking or securities business in accordance with Exchange Act Rule 17a–4(b) [12] and make those records available to FINRA upon request.

(v) Proposed FINRA Rule 3110(b)(5) (Review of Customer Complaints)

Incorporated NYSE Rule 401A requires firms to acknowledge and respond to all customer complaints subject to the reporting requirements of Incorporated NYSE Rule 351(d) (Reporting Requirements). Previously, this meant that firms had to acknowledge and respond to both written and oral customer complaints. However, as part of the effort to harmonize the NASD and NYSE rules in the interim period before completion of the Consolidated FINRA Rulebook, Incorporated NYSE Rule 351(d) was amended to limit the definition of ''customer complaint'' to include only written complaints, thereby making the definition substantially similar to that in NASD Rule 3070(c) (Reporting Requirements).[13]

Proposed FINRA Rule 3110(b)(5), which requires a member's supervisory procedures to include procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints, essentially incorporates the customer complaint requirement in Incorporated NYSE Rule 401A, including the limitation on including only written (including electronic) customer complaints. FINRA believes that oral complaints are difficult to capture and assess, and they raise competing views as to the substance of the complaint being alleged. Consequently, oral complaints do not lend themselves as effectively to a review program as written complaints, which are more readily documented and retained. However, FINRA reminds members that the failure to address any customer complaint, written or oral, may be a violation of FINRA Rule 2010.

(vi) Proposed FINRA Rule 3110(b)(6) (Documentation and Supervision of Supervisory Personnel) and Proposed Supplementary Material .12

Proposed FINRA Rule 3110(b)(6) is based largely on existing provisions in NASD Rule 3010(b)(3) requiring a member's supervisory procedures to set forth the member's supervisory system and to include a record of the member's supervisory personnel with such details as titles, registration status, locations, and responsibilities. The proposed rule also includes a new provision, proposed FINRA Rule 3110(b)(6)(C), that would address potential abuses in connection with the supervision of supervisors. This provision would replace NASD Rule 3012(a)(2) concerning the supervision of a producing manager's customer account activity and the requirement to impose heightened supervision when any producing manager's revenues rise above a specific threshold.

Specifically, the proposed provision requires members to have procedures prohibiting associated persons who perform a supervisory function from:

- Supervising their own activities; and
- Reporting to, or having their compensation or continued employment determined by, someone they are supervising.

The proposal, however, creates an exception for a member that determines, with respect to any of its supervisory personnel, that compliance with either of these conditions is not possible because of the member's size or a supervisory personnel's position within the firm. A member relying on this exception must document the factors the member used to reach such determination and how the supervisory arrangement with respect to such supervisory personnel otherwise comports with proposed FINRA Rule 3110(a). Proposed Supplementary Material .12 (Supervision of Supervisory Personnel) explains that a member generally will need to rely on this exception only because it is a sole proprietor in a single-person firm or where a supervisor holds a very senior executive position within the firm. Members relying on this exception would not be required to notify FINRA of their reliance.[14]

[9] FINRA adopted FINRA Rule 4530 to replace NASD Rule 3070 and comparable provisions in Incorporated NYSE Rule 351 (Reporting Requirements). *See* Exchange Act Release No. 63260 (November 5, 2010), 75 FR 69508 (November 12, 2010) (Order Approving File No. SR–FINRA–2010–034). FINRA Rule 4530 becomes effective on July 1, 2011. *See Regulatory Notice* 11–06 (February 2011). With respect to customer complaints, as detailed further below, proposed FINRA Rule 3110(b)(5) also would affirmatively require members to capture, acknowledge, and respond to all written (including electronic) customer complaints.

[10] On January 27, 2011, the SEC approved, among other things, FINRA Rule 4515 (Approval and Documentation of Changes in Account Name or Designation) to replace NASD Rule 3110(j), and the deletion of Incorporated NYSE Rule 410. *See* Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving File No. SR–FINRA–2010–052). This rule change becomes effective on December 5, 2011. *See Regulatory Notice* 11–19 (April 2011).

[11] *See Regulatory Notice* 07–59 (December 2007).

[12] 17 CFR 240.17a–4(b).

[13] *See* Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving File No. SR–FINRA–2008–036). As noted previously, FINRA Rule 4530 will replace NASD Rule 3070 and comparable provisions in Incorporated NYSE Rule 351, effective July 1, 2011. *See supra* note 9.

[14] *See* NAIBD letter, *infra* note 21, requesting clarification regarding potential notification requirements for members relying on the proposed exception.

Proposed FINRA Rule 3110(b)(6)(D) requires a member to have procedures to prevent the standards of supervision required pursuant to proposed FINRA Rule 3110(a) from being reduced in any manner due to any conflicts of interest that may be present with respect to the associated person being supervised, such as the person's position, the amount of the revenue generated by such person, or any other factor that would present a conflict. There is no exception from this provision.

(vii) Proposed FINRA Rule 3110(b)(7) (Maintenance of Written Supervisory Procedures) and Proposed Supplementary Material .13

Proposed FINRA Rule 3110(b)(7), which replaces the nearly identical provision in NASD Rule 3010(b)(4), requires a member to retain, and keep current, a copy of the member's written supervisory procedures at each OSJ and at each location where supervisory activities are conducted on behalf of the member. The member must also communicate any amendments to its written supervisory procedures throughout its organization. Proposed Supplementary Material .13 (Use of Electronic Media to Communicate Written Supervisory Procedures) permits a member to distribute and amend its written supervisory procedures using electronic media, subject to certain conditions. Those conditions include: (1) Quick and easy access to the written supervisory procedures; (2) prompt posting of any written supervisory procedure amendments; (3) notifying associated persons of such amendments; (4) verifying, at least once each calendar year, that associated persons have reviewed the written supervisory procedures; (5) having reasonable security procedures to ensure that the written supervisory procedures cannot be altered by unauthorized persons; and (6) retaining current and prior versions of the written supervisory procedures in compliance with the applicable record retention requirements of Exchange Act Rule 17a–4(e)(7).[15]

(C) Proposed FINRA Rule 3110(c) (Internal Inspections) and Proposed Supplementary Material .14–.16

Proposed FINRA Rule 3110(c)(1), based largely on NASD Rule 3010(c)(1), retains the existing requirements for each member to review, at least annually, the businesses in which it engages and inspect each office on a specified schedule. That inspection schedule requires that OSJs and supervisory branch offices be inspected at least annually, non-supervisory branch offices be inspected at least every three years, and non-branch locations be inspected on a regular periodic schedule. The proposed rule provision also clarifies that the term ''annually,'' as used in proposed FINRA Rule 3110(c), means on a calendar-year basis.

Proposed Supplementary Material .15 (General Presumption of Three-Year Limit for Periodic Inspection Schedules) provides a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any indicators of irregularities or misconduct (*i.e.,* ''red flags''). If a member establishes a periodic inspection schedule longer than three years, the member must document in its written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate. As with NASD Rule 3010(c), proposed FINRA Rule 3110(c) requires a member to retain a written record of each review and inspection, reduce a location's inspection to a written report, and keep each inspection report on file either for a minimum of three years or, if the location's inspection schedule is longer than three years, until the next inspection report has been written.

The proposal revises NASD Rule 3010(c)(3)'s provisions prohibiting certain persons from conducting office inspections to make the provisions less prescriptive. To that end, the proposed rule eliminates the heightened office inspection requirements members must implement if the branch office manager and the person conducting the office inspection report to the same person. The proposal replaces these requirements with provisions requiring a member to:

- Prevent the inspection standards required pursuant to proposed FINRA Rule 3110(c)(1) from being reduced in any manner due to any conflicts of interest that may be present, including but not limited to, economic, commercial, or financial interests in the associated persons and businesses being inspected; and
- Ensure that the person conducting an inspection pursuant to proposed FINRA Rule 3110(c)(1) is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to the location.

A member that determines it cannot comply with this last condition due to its size or business model must document in the inspection report both the factors the member used to make its determination and how the inspection otherwise comports with proposed FINRA Rule 3110(c)(1). Proposed Supplementary Material .16 (Exception to Persons Prohibited from Conducting Inspections) explains that such a determination generally will arise only in instances where the member has only one office or the member has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager. The proposal also retains as Supplementary Material .14 (Standards for Reasonable Review) the content of NASD IM–3010–1 (Standards for Reasonable Review) relating to standards for the reasonable review of offices, which has already been harmonized with the review requirements in analogous Incorporated NYSE Rule 342.10.

In addition, the proposal relocates into proposed FINRA Rule 3110(c)(2) certain provisions in NASD Rule 3012 regarding the review and monitoring of certain specific activities, such as transmittals of funds and securities and customer changes of address and investment objectives. Specifically, proposed FINRA Rule 3110(c)(2)(A) requires a member to test and verify a location's procedures for the safeguarding of customer funds and securities, maintenance of books and records, supervision of supervisory personnel, transmittals of funds or securities, and changes of customer account information, including address and investment objective changes and validation of such changes.

Proposed FINRA Rule 3110(c)(2)(B) requires a means or method of customer confirmation regarding transmittals of funds and securities but makes clear that members may use risk-based methods to determine the authenticity of the transmittal instructions. Proposed FINRA Rule 3110(c)(2)(C) also requires a means or method of customer confirmation for changes of customer account information. Finally, proposed FINRA Rule 3110(c)(2)(D) makes clear that if a location being inspected does not engage in all of the activities listed above, the member must identify those activities in the location's written inspection report and document in the report that supervisory policies and procedures must be in place at that location before the location can engage in them.

[15] 17 CFR 240.17a–4(e)(7).

(D) Proposed FINRA Rule 3110(d) (Transaction Review and Investigation)

Section 15(g) of the Act,[16] adopted as part of the Insider Trading and Securities Fraud Enforcement Act of 1988 (''ITSFEA''),[17] requires every registered broker or dealer to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the broker or dealer or any associated person of the broker or dealer. Incorporated NYSE Rule 342.21 sets forth specific supervisory procedures for compliance with ITSFEA by requiring firms to review trades in NYSE-listed securities and related financial instruments that are effected for the member's account or for the accounts of the member's employees and family members. Incorporated NYSE Rule 342.21 also requires members to promptly conduct an internal investigation into any trade the firm identifies that may have violated insider trading laws or rules.

FINRA is proposing FINRA Rule 3110(d) to incorporate into the Consolidated FINRA Rulebook the provisions of Incorporated NYSE Rule 342.21, with some modifications, and extend the requirement beyond NYSE-listed securities and related financial instruments to cover all securities. Specifically, proposed FINRA Rule 3110(d)(1) requires a member to have supervisory procedures for the review of securities transactions that are effected for the account(s) of the member and/or associated persons of the member as well as any other ''covered account'' [18] to identify trades that may violate the provisions of the Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices. The proposed rule change also requires members to promptly conduct an internal investigation into any identified trades to determine whether a violation of those laws or rules has occurred.

Proposed FINRA Rule 3110(d)(2) requires any member that engages in ''investment banking services,'' [19] to provide reports to FINRA regarding such investigations. These members would be required to make reports to FINRA within ten business days of the initiation of an investigation, each quarter to update the status of all ongoing investigations, and within five business days of the conclusion of an investigation.

(E) Proposed FINRA Rule 3110(e) (Definitions)

Proposed FINRA Rule 3110(e) retains the definitions of ''branch office,'' ''office of supervisory jurisdiction,'' and ''business day'' in NASD Rule 3010(g). The branch office definition already has been harmonized with the definition of ''branch office'' in Incorporated NYSE Rule 342.10.

(2) Proposed FINRA Rule 3120 (Supervisory Control System)

FINRA is proposing to replace NASD Rule 3012 (Supervisory Control System) with FINRA Rule 3120. Proposed FINRA Rule 3120(a) retains NASD Rule 3012(a)(1)'s testing and verification requirements for the member's supervisory procedures, including the requirement to prepare and submit to the member's senior management a report at least annually summarizing the test results and any necessary amendments to those procedures.

Proposed FINRA Rule 3120(b) requires a member that reported $150 million or more in gross revenue (total revenue less, if applicable, commodities revenue) on its FOCUS reports in the prior calendar year to include in the report it submits to senior management:

- A tabulation of the reports pertaining to customer complaints and internal investigations made to FINRA during the preceding year; and
- A discussion of the preceding year's compliance efforts, including procedures and educational programs, in each of the following areas:
  - Trading and market activities;
  - Investment banking activities;
  - Antifraud and sales practices;
  - Finance and operations;
  - Supervision;
  - Anti-money laundering; and
  - Risk management.

With the exception of risk management, the categories listed above are incorporated from the annual report content requirements of Incorporated NYSE Rule 342.30 (Annual Report and Certification). The requirement to adequately manage the risks of a member's business is an inherent part of the member's obligations under FINRA's supervision and supervisory control rules. Accordingly, FINRA believes that a discussion of the member's compliance efforts in the area of risk management should be included in proposed FINRA Rule 3120's additional annual report content requirements.

(3) Proposed FINRA Rule 3150 (Holding of Customer Mail)

The proposed rule change replaces NASD Rule 3110(i) (Holding of Customer Mail) with proposed FINRA Rule 3150, a more general rule that eliminates the strict time limits in NASD Rule 3110(i) and generally allows a member to hold a customer's mail for a specific time period in accordance with the customer's written instructions if the member meets certain conditions. Specifically, proposed FINRA Rule 3150(a) provides that a member may hold mail for a customer who will not be receiving mail at his or her usual address, provided that the member:

- Receives written instructions from the customer that include the time period during which the member is requested to hold the customer's mail. If the time period included in the customer's instructions is longer than three consecutive months (including any aggregation of time periods from prior requests), the customer's instructions must include an acceptable reason for the request (*e.g.,* safety or security concerns). Convenience is not an acceptable reason for holding mail longer than three months;
- Informs the customer in writing of any alternate methods, such as e-mail or access through the member's Web site, that the customer may use to receive or monitor account activity and information and obtains the customer's confirmation of the receipt of such information; and
- Verifies at reasonable intervals that the instructions still apply.

In addition, proposed FINRA Rule 3150(b) requires that the member be able to communicate, as necessary, with the customer in a timely manner during the time the member is holding the customer's mail to provide important account information (*e.g.,* privacy notices, the SIPC information disclosures required by FINRA Rule 2266).

Finally, proposed FINRA Rule 3150(c) requires a member holding a customer's mail to take actions reasonably designed

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[16] 15 U.S.C. 78*o*(g).

[17] *See* Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100–704, 102 Stat. 4677.

[18] Proposed FINRA Rule 3110(d)(3)(A) defines the term ''covered account'' to include (i) any account held by the spouse, child, son-in-law, or daughter-in-law of a person associated with the member where such account is introduced or carried by the member; (ii) any account in which a person associated with the member has a beneficial interest; and (iii) any account over which a person associated with the member has the authority to make investment decisions.

[19] Proposed FINRA Rule 3110(d)(3)(B) defines the term ''investment banking services'' to include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer, or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer. This proposed definition is the same definition as in proposed FINRA Rule 2240(a)(4) (Research Analysts and Research Reports). *See Regulatory Notice* 08–55 (October 2008).

to ensure that the customer's mail is not tampered with, held without the customer's consent, or used by an associated person of the member in any manner that would violate FINRA rules, MSRB rules, or the Federal securities laws.

(4) Proposed FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms)

FINRA proposes to reconstitute NASD Rule 3010(b)(2) (Tape Recording of Conversations) without any substantive changes as new FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms). The only proposed changes to the rule text are minor editorial changes to assist with readability, changes to the definition of disciplinary history to reflect the adoption of certain enumerated NASD rules as FINRA rules, and a definition clarifying that the term ''tape recording'' includes without limitation, any electronic or digital recording that meets the requirements of proposed FINRA Rule 3170.

(5) Proposed FINRA Rule 1260 (Responsibility of Member To Investigate Applicants for Registration)

FINRA is proposing to relocate the requirements in NASD Rule 3010(e) (Qualifications Investigated) concerning a member's responsibilities during the pendency of a person's application for registration as a representative or principal to a standalone new registration rule, FINRA Rule 1260 (Responsibility of Member to Investigate Applicants for Registration). In addition, the proposed rule change deletes NASD Rule 3010(f) (Applicant's Responsibility) requiring an applicant for registration to provide, upon a member's request, a copy of his or her Form U5. The provision is no longer necessary because members now have electronic access to an applicant's Form U5 through the Central Registration Depository.

(6) Proposal To Eliminate Certain NYSE Rules

As mentioned previously, the proposed rule change deletes corresponding provisions in the Incorporated NYSE Rules and Interpretations that are, in main part, either duplicative of, or do not align with, the proposed supervision requirements discussed above. Specifically, the proposed deleted rule provisions are:

- Incorporated NYSE Rule 342;
- NYSE Rule Interpretations 342(a)(b)/01 through 342(a)(b)/03, 342(b)/01 through 342(b)/02, 342(c)/02, 342(e)/01, 342.10/01, 342.13/01, 342.15/01 through 342.15/05, 342.16/01 through 342.16/03;
- Incorporated NYSE Rules 343, 343.10 and NYSE Rule Interpretation 343(a)/01;
- Incorporated NYSE Rule 351(e) and NYSE Rule Interpretation 351(e)/01;
- Incorporated NYSE Rule 354; and
- Incorporated NYSE Rule 401.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[20] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change will clarify and streamline the supervision and supervisory rules for adoption as FINRA Rules in the Consolidated FINRA Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA published the proposed rules in *Regulatory Notice* 08–24 (May 2008) requesting comment from interested parties. A copy of the *Regulatory Notice* is attached as Exhibit 2a. FINRA received 47 comment letters. A list of the commenters and copies of the comment letters received are attached as Exhibits 2b and 2c, respectively.[21] The comments and FINRA's responses are discussed below.

(a) General Comments

Many of the commenters expressed general support for the proposed rules. Commenters especially commended FINRA for proposing rules that give members the flexibility to design supervisory procedures that reflect their individual business models, as well as eliminating obsolete and/or duplicative requirements.[22]

One commenter, PIABA, opposed the flexibility within the proposed rules, including the proposed risk-based review standards for the approval of securities transactions and the review of certain correspondence, arguing that such flexibility appears to reduce the supervision requirements, thereby diminishing the protection of the investing public. FINRA disagrees. The proposed rules include prescriptive provisions where necessary, while also providing firms with additional flexibility to establish their supervisory programs in a manner that reflects their business models, where consistent with the principles of investor protection and market integrity. In this regard, the proposal retains certain specific requirements of NASD Rules 3010 and 3012, such as mandatory inspection cycles, prohibitions on who can conduct location inspections, and procedures for the monitoring of certain enumerated activities, while providing additional prescriptive requirements where necessary, including special supervision for supervisory personnel rather than just the existing special supervision for producing branch managers, specific procedures to detect and investigate potential insider trading violations, and additional content requirements for certain firms' annual reports. Additionally, with respect to the risk-based review of correspondence, as explained further below, the proposed rules would codify certain existing guidance.

One commenter requested that all supplementary material be moved into the ''body'' of the proposed rules.[23] FINRA notes that supplementary material is considered part of the rule and carries the same force of regulation. Supplementary material provisions provide additional detail regarding a requirement that either appears elsewhere in the rule or is of special significance.

(b) Comments on Proposed FINRA Rule 3110(a) (Supervisory System)

(1) Use of ''Associated Person''

Several commenters objected to the use of the term ''associated person'' in the preamble of proposed FINRA Rule 3110(a), arguing that FINRA could

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] All references to commenters in this rule filing are to the commenters as listed in Exhibit 2b.

[22] ProEquities, ICBA Financial, WealthTrust, LPL, Nationwide Financial, NAIBD, Northwestern Mutual, ING, Prudential, Comerica, WilmerHale, Charles Schwab, CCS.

[23] National Planning.

effectively expand its jurisdiction over non-broker-dealer entities by broadly interpreting this term to include a member's affiliates and the affiliates' employees.[24] To avoid this result, the commenters suggested retaining the reference in NASD Rule 3010(a) to ''registered representative, registered principal, and other associated person.''

These concerns are unfounded as the FINRA By-Laws specifically define who is an ''associated person of a member.'' [25] Included in that definition are all persons who are registered (or have applied for registration) with FINRA. Accordingly, in drafting proposed FINRA Rule 3110(a), FINRA omitted the references to registered representatives and principals as duplicative and unnecessary. The elimination of the terms ''registered representative'' and ''registered principal'' does not alter the reach of the provision or expand FINRA's jurisdiction in any way. FINRA's jurisdiction continues to extend to all persons, regardless of affiliation, that meet the associated person definition.

(2) Permissive Licenses

Commenters also suggested that proposed FINRA Rule 3110(a) should acknowledge that associated persons holding permissive licenses who do not engage in securities activities can have a different level of supervision than registered persons actively engaged in securities activities.[26] To that end, certain commenters even suggested that FINRA rewrite proposed FINRA Rule 3110(a) to refer only to associated persons who are ''actively engaged in the securities business of the firm.'' [27] In response, FINRA notes that it has separately issued for comment the proposed consolidated FINRA rules governing registration and qualification requirements.[28] Among other things, those proposed rules address permissive registration categories and members' differentiated supervisory obligations with respect to persons registered pursuant to such categories.

(3) MSRB Rules

One commenter questioned the proposed requirement to have a supervisory system that is reasonably designed to achieve compliance with MSRB rules, arguing that members affiliated with banks that have opted to conduct their municipal securities business within a bank should not be required to supervise in-bank municipal securities activities.[29] Any member that falls within the Act's definitions of ''municipal securities broker'' or ''municipal securities dealer'' must comply with all applicable obligations, including the obligation to supervise the municipal securities activities of its associated persons and the conduct of its municipal securities business, set forth in the Federal securities law and MSRB rules. Proposed FINRA Rule 3110(a) does not alter this basic premise. Rather, it supports the premise by expressly requiring members to have supervisory procedures that are reasonably designed to achieve compliance with the applicable Federal securities laws and regulations, FINRA rules, and MSRB rules.

Additionally, although FINRA enforces and examines its members for compliance with MSRB rules, current NASD Rule 3010(a) does not expressly require members to design supervisory systems to achieve compliance with the MSRB rules. The proposed rule change clarifies that supervisory systems must extend to compliance with MSRB rules and also aligns FINRA's supervisory system requirement with the existing requirement under MSRB rules to have a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations and MSRB rules.[30]

FINRA is not making any changes to the preamble in proposed FINRA Rule 3110(a) in response to the comments above.

(c) Comments on Proposed FINRA Rule 3110(a)(2): Designated Principal

(1) A Designated Principal for All Business Lines

As proposed in *Regulatory Notice* 08–24, FINRA Rule 3110(a)(2) required a member to designate an appropriately registered principal(s) with authority to carry out the member's supervisory responsibilities for all of a member's business lines, regardless of whether a business line required broker-dealer registration. Commenters had several reactions to this proposed change. Some commenters asked whether the proposed change would expand FINRA's jurisdiction and rules into non-securities activities, such as insurance and investment advisory services that are already regulated by other regulators.[31] Other commenters asked about the appropriate principal registration license for persons responsible for non-broker-dealer business lines.[32] One commenter asked how a firm would comply with the provision without violating the prohibition in NASD Rule 1021(a) (All Principals Must Be Registered) prohibiting principal registration of associated persons who are not currently engaging in a member's investment banking or securities business.[33]

The proposed rule change was intended to explicitly address the fact that a member is responsible for having a supervisory system that encompasses all of its business lines. Thus, if a member chooses to engage in a business that does not require registration as a broker-dealer, the member is nonetheless responsible for supervising that business. To avoid further confusion, FINRA has proposed to retain the language in NASD Rule 3010(a) and adopt supplementary material explaining this requirement. Consequently, proposed Supplementary Material .01 (Business Lines) provides that for a member's supervisory system required by proposed FINRA Rule 3110(a) to be reasonably designed to achieve compliance with FINRA Rule 2010, it must include supervision for all of the member's business lines irrespective of whether they require broker-dealer registration.

As FINRA noted in *Regulatory Notice* 08–24, the requirement that a member supervise all of its business lines is consistent with NASD Rule 3010(b)(1) (and proposed FINRA Rule 3110(b)(1)), which currently requires a member to have supervisory procedures for all business activities in which it engages. Additionally, a member's responsibility for appropriate supervision for all of its business activities is consistent with a member's obligation under FINRA Rule 2010 to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.[34] These general

[24] National Planning, Cornerstone Financial, Nationwide Financial, Great American Advisors, FSI.

[25] *See* FINRA By-Laws Art. 1(rr); *see also Notice to Members* 98–38 n.5 (May 1998) (citing the same By-Laws definition to clarify the term ''associated person'').

[26] FSI, Cornerstone Financial.

[27] Great American Advisors, National Planning, M Holdings.

[28] *See Regulatory Notice* 09–70 (December 2009).

[29] ABA.

[30] *See* MSRB Rule G–27(b).

[31] Cornerstone Financial, National Planning, Comerica, LPL, Nationwide Financial, Great American Advisors, Janney, FSI, NAIBD, WilmerHale, CAI, Charles Schwab, CCS, NSCP, SIFMA, Wachovia Securities, FPA, ING, NFA.

[32] Janney, Charles Schwab, SIFMA, Wachovia Securities, FPA, NFA.

[33] SIFMA. NASD Rule 1021(a) permits a member to maintain a principal license for an associated person who performs legal, compliance, internal audit, back office operations, or similar responsibilities for the member or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

[34] FINRA is required under the Act to have rules that, among other things, are designed to prevent

ethical standards protect investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, regardless of whether those practices occur in business lines that do not require broker-dealer registration or are not illegal or violate a specific rule, law, or regulation.[35] The proposal merely codifies, under proposed FINRA Rule 3110, a member's duty required by FINRA Rule 2010 to supervise all business activities, irrespective of whether they are part of a member's investment banking or securities business.[36]

(d) Comments on Proposed Supplementary Material .03 (Designation of Additional OSJs)

Several commenters raised questions regarding the factors set forth in proposed Supplementary Material .03 that a member should consider in designating additional OSJs.[37] One commenter requested that FINRA delete the factor regarding whether registered persons at the location engage in retail sales or other activities involving regular customer contact with the public as it was not a previously articulated factor.[38] Two other commenters asked that FINRA clarify the terms ''diverse'' and ''complex'' as used in the factors.[39] FINRA notes that proposed Supplementary Material .03 transfers NASD Rule 3010(a)(3) unchanged into the Consolidated FINRA Rulebook without adding any new requirements or language. No single factor is dispositive, but members must use these factors, as necessary, to supervise their associated persons and activities in accordance with proposed FINRA Rule 3110.

(e) Comments on Proposed FINRA Rule 3110(a)(4) and Supplementary Material .04 and .05

Commenters requested clarification regarding several aspects of the requirement in proposed Rule 3110(a)(4) for a member to designate an appropriately registered principal in each OSJ to carry out supervisory responsibilities assigned to that location and the proposed Supplementary Material .04 (One-Person OSJs) and .05 (Supervision of Multiple OSJs by a Single Principal).[40] In main part, the commenters' concerns are centered on their belief that the proposed provisions do not take into account the business and supervisory structure of independent dealer firms and appear to be more tailored to ''wirehouses.'' Specifically, one commenter objected to the requirement in proposed Supplementary Material .04 to designate a senior principal to supervise the activities of a producing on-site principal at a one-person OSJ.[41] The commenter believed that a producing manager at one-person OSJs should be able to supervise his or her own activities. The commenter noted that its firm employs a ''field OSJ'' supervisory structure that permits field OSJ staff to conduct supervisory functions and also be producing managers. The commenter stated that requiring an on-site principal to supervise one-person OSJs would result in the firm needing over 3,300 new staff in the field.

Proposed Supplementary Material .04 codifies existing FINRA guidance on the designation and supervision of one-person OSJs. The provision makes clear that a member may establish a one-person OSJ and also clarifies how a member can establish reasonable on-site supervision on a regular periodic schedule determined by the member at a one-person OSJ in light of the core concept that a principal cannot supervise his or her own activities. A one-person office that is designated an OSJ because it engages in final approval of new accounts or sales literature presents an inherently different supervisory challenge than a one-person OSJ location where the single on-site principal engages in structuring public offerings and/or is a producer. In the latter instance, the proposed supplementary material makes clear that the principal cannot supervise his or her own sales activities due to the conflict of interest such situation presents. Accordingly, FINRA believes that the requirement to have a senior principal regularly supervise the activities of an on-site producing principal is necessary to ensure that the on-site principal's activities are appropriately supervised.

With respect to concerns regarding the need for additional personnel to meet the proposed requirements, FINRA believes that the proposed supplementary material provides members with flexibility in designing a supervisory scheme for these locations by not mandating a specific schedule, but rather, permitting the member to establish the schedule after considering certain factors (*e.g.,* the nature and complexity of the securities activities for which the location is responsible, the nature and extent of contact with customers, and the disciplinary history of the on-site principal). Consequently, FINRA has not revised the proposed supplementary material as requested by the commenters.

Several commenters requested that FINRA revise the presumption in proposed Supplementary Material .05 that a principal cannot supervise more than one OSJ to allow a registered principal to supervise additional OSJs.[42] In addition, at least one commenter stated that firms and their registered principals should be allowed to determine the appropriate number of offices assigned to each OSJ manager and the rules ''should clearly reflect that firms have this freedom in designing their supervisory system.'' [43] Commenters further stated that the requirement of a ''physical presence'' on a regular and routine basis is overly burdensome and biased against independent broker-dealer firms.[44]

FINRA does not agree that the proposed supplementary material is biased against independent dealer firms. Members are currently required under NASD Rule 3010(a)(4) to designate an appropriately registered principal in each OSJ and an appropriately registered representative or principal in each non-OSJ branch office with authority to carry out supervisory responsibilities. Proposed FINRA Rule 3110(a)(4) transfers that provision unchanged into the Consolidated FINRA Rulebook. The one-principal-per-OSJ presumption in proposed Supplementary Material .05 explains the meaning of the term ''in each OSJ'' in proposed FINRA Rule 3110(a)(4). This presumption does not limit a

fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. 15 U.S.C. 78*o*–3(b)(6).

[35] *See Ialeggio* v. *SEC,* No. 98–70854, 1999 U.S. App. LEXIS 10362, at *4–5 (9th Cir. May 20, 1999) (''NASD's disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.'') (citations omitted).

[36] A number of other FINRA rules apply to conduct irrespective of whether securities transactions are directly involved. For instance, NASD Rule 2210 (Communications with the Public) requires that all member communications with the public be based on principles of fair dealing and good faith and prohibits the distribution to the public of exaggerated, unwarranted, or misleading advertisements and sales literature. *See Robert L. Wallace,* 53 S.E.C. 989, 995 (1998) (Rule 2210 is ''not limited to advertisements for securities, but provide[s] standards applicable to all NASD member communications with the public''). *See also Daniel C. Adams,* 47 S.E.C. 919, 920–21 (1983) (finding that it was within NASD's authority pursuant to NASD Rule 8210 (now FINRA Rule 8210) to investigate and seek information about a product that the broker was selling even assuming that the product was not a security).

[37] Thornburg, NAIBD, Cornerstone Financial, FSI.

[38] NAIBD.

[39] Cornerstone Financial, FSI.

[40] LPL, Cornerstone Financial, FSI.

[41] LPL.

[42] LPL, Cornerstone Financial, FSI.

[43] Cornerstone Financial.

[44] Thornburg, Cornerstone Financial, FSI, NAIBD, SIFMA.

member's ability to have more than one principal in the supervisory chain for an OSJ. Rather, FINRA believes that the presumption is consistent with the long-standing requirement in NASD Rule 3010(a)(4) for members to have an on-site principal in each OSJ location, which is a cornerstone of a member's supervisory structure. Moreover, FINRA believes that physical presence, on a regular and routine basis, by a supervisor at a location that engages in significant activities is necessary for effective oversight. The presumption ensures that such on-site principal has sufficient time and resources to engage in meaningful supervision. However, in response to the comments, FINRA has modified proposed Supplementary Material .05 to make it clear that the presumption applies only to the designation of the on-site principal supervisor required for FINRA Rule 3110(a)(4) purposes in each OSJ location.

(f) Comments on Proposed Supplementary Material .06 (Annual Compliance Meeting)

Several commenters supported proposed Supplementary Material .06, which allows a member to conduct annual compliance meetings through electronic means rather than holding in-person meetings.[45] Two commenters, however, asked that the text be simplified or clarified.[46] One of the commenters also asked that the term ''presenter'' be deleted, as ''many webcasts have audio recordings and screens, rather than presenters, and employees with questions may be directed to an email address or group of individuals, rather than to a single presenter.'' [47] FINRA believes that the proposed rule text provides significant flexibility as to the methods members may choose to conduct their annual compliance meetings; however, in response to commenters' concerns, FINRA has revised the proposed rule to eliminate the term ''presenter,'' thereby further recognizing that members may employ methods that may not necessarily involve a specific presenter. The proposed rule would continue to require that registered persons attending the meeting be able to ask questions regarding the presentation and receive answers in a timely fashion (*e.g.,* an on-demand annual compliance Web cast that allows registered persons to ask questions via an e-mail to a presenter or a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the member's intranet site). FINRA also reminds members that the proposed supplementary material requires a member to ensure, at a minimum, that each registered person attends the entire meeting.

(g) Comments on Proposed FINRA Rule 3110(b)(1) (General Requirements) (1) Use of ''Associated Person''

Several commenters objected to the use of the term ''associated person'' by itself in proposed FINRA Rule 3110(b)(1), arguing that its use could effectively expand FINRA's jurisdiction to include a member's affiliates.[48] This argument is similar to those raised by commenters objecting to the same proposed change in FINRA Rule 3110(a). As noted in FINRA's response to that argument, the use of ''associated person'' by itself does not effectively expand FINRA's jurisdiction as the FINRA By-Laws specifically define who is considered an ''associated person of a member.'' [49] Included in the definition are persons who are registered (or have applied for registration) with FINRA, which includes registered representatives and registered principals. Accordingly, FINRA drafted proposed FINRA Rule 3110(b)(1) without the references to registered representatives and principals because such persons are already included in the term ''associated person.''

(2) Scope of Supervisory Procedures

Some commenters suggested narrowing the scope of FINRA Rule 3110(b)(1) by having a member's written supervisory procedures address only those types of business for which broker-dealer registration is required.[50] FINRA declines to adopt this suggestion for several reasons. First, NASD Rule 3010(b)(1) currently requires a member to have supervisory procedures to supervise all types of business in which it engages. Proposed FINRA Rule 3010(b)(1) merely retains this existing requirement. Second, as explained above, a member's supervisory system must include appropriate supervision for all of its business activities in order to comply with its obligations under FINRA Rule 2010 to protect investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market.

(h) Comments on Proposed FINRA Rule 3110(b)(2) (Review of a Member's Investment Banking and Securities Business)

(1) ''One Size Fits All''

Two commenters objected to the proposed provision requiring a member to review its investment banking and securities business on the basis that a firm's investment banking business and its securities business are inherently different and that any supervisory review for these businesses should not be subject to a ''one-size-fits-all approach.'' [51] The commenters build on their objection with the arguments that since members adopt specific supervisory structures and supervisory procedures specific to their investment banking businesses, implementing this proposed requirement would be ''unnecessary'' and ''duplicative.'' [52] These objections do not take into account the fact that a member's supervisory procedures should be tailored to a member's business. As long as a member has supervisory procedures that meet the requirements of the proposed rule, a member may design procedures specific to its individual business lines.

(2) Use of Risk-Based Principles

Several commenters requested that the risk-based provision in proposed Supplementary Material .07 be inserted into the body of the rule.[53] As noted previously, supplementary material is part of the rule. FINRA believes that locating the risk-based discussion as supplementary material improves the readability of the rule without affecting the weight or significance of the provision. Finally, one commenter requested that FINRA clarify the meaning of the term ''risk-based.'' [54] The term ''risk-based,'' which the proposed rule uses in several places, describes the type of methodology a member may use to identify and prioritize for review those areas that pose the greatest risk of potential securities laws and self-regulatory organization (''SRO'') rule violations. FINRA acknowledges that members may need to prioritize their review processes due to the volume of information that must be reviewed by using a review methodology based on a reasonable sampling of information in

[45] NAIBD, ING, SIFMA.

[46] ING, SIFMA.

[47] SIFMA.

[48] National Planning, Cornerstone Financial, Nationwide Financial, Great American Advisors.

[49] *See* FINRA By-Laws, Art. 1(rr); *see also Notice to Members* 98–38 n.5 (May 1998) (citing the same By-Laws definition to clarify the term ''associated person'').

[50] National Planning, Cornerstone Financial, FSI.

[51] Janney, SIFMA.

[52] *Id.*

[53] Cornerstone Financial, FSI, LPL, Nationwide Financial, Great American Advisors, Janney, NSCP, SIFMA, ING.

[54] PIABA.

which the sample is designed to discern the degree of overall compliance, the areas that pose the greatest numbers and risks of violation, and any possibly needed changes to firm policies and procedures. In addition, FINRA believes that allowing risk-based review in limited circumstances improves investor protection by ensuring that those areas that pose the greatest potential for investor harm are reviewed more quickly to uncover potential violations.

(i) Comments on Proposed FINRA Rule 3110(b)(3) (Supervision of Outside Securities Activities)

As noted above, proposed FINRA Rule 3110(b)(3) is reserved for future rule making. Accordingly, FINRA is not addressing any comments received on proposed FINRA Rule 3110(b)(3) and related Supplementary Material .07 as such comments are outside of the scope of this proposed rule change.

(j) Comments on Proposed FINRA Rule 3110(b)(4) (Review of Correspondence and Internal Communications) and Supplementary Material .08–.11

One commenter suggested that proposed FINRA Rule 3110(b)(4) and proposed Supplementary Material .08 (Risk-based Review of Correspondence and Internal Communications) could be read to create a new affirmative obligation to supervise all written and electronic internal communications relating to investment banking and securities activities.[55] This conclusion appears to be a misreading of the proposed rule change. As explained in the Purpose section, although there are certain communications that members must review, members may use risk-based review principles to determine the extent to which additional communications should be reviewed.[56]

Proposed FINRA Rule 3110(b)(4) requires each member to have supervisory procedures to review its incoming and outgoing (including electronic) correspondence with the public and internal communications relating to the member's investment banking or securities business to ensure that the member properly identifies and handles in accordance with firm procedures, among other things, customer complaints, instructions, and funds and securities. Two commenters noted that this requirement conflicted with the guidance in *Regulatory Notice* 07–59, which the commenters contend does not instruct members to review internal communications for these topics (outside of those relating to the identifying and reporting of customer complaints).[57] FINRA believes that proposed FINRA Rule 3110(b)(4) and the guidance in *Regulatory Notice* 07–59 do not conflict. *Regulatory Notice* 07–59 specifically notes that a member must have procedures for the review of its associated persons' incoming, outgoing, and internal electronic communications that are of a subject matter that require review under FINRA rules and the Federal securities laws. It is FINRA's view that the categories at issue are of a subject matter that would require review under the Federal securities laws and FINRA rules, including current NASD Rule 3010(d)(2).

Several commenters also requested that FINRA replace the phrase ''to ensure'' in proposed FINRA Rule 3110(b)(4) with ''reasonably designed to ensure.'' [58] FINRA declines to make this requested change. Proposed FINRA Rule 3010(b)(1) already requires a member to have reasonably designed written procedures. The term ''to ensure'' is the standard around which those supervisory procedures must be designed. Altering the standard to read ''reasonably designed to ensure'' is a redundancy and would only serve to weaken the standard.

SIFMA and Janney requested that FINRA delete the provision in proposed Supplementary Material .09 (Evidence of Review of Correspondence and Internal Communications) stating that merely opening a communication is not sufficient review. NAIBD also supported deleting this provision, noting that electronic review systems could become more sophisticated and thus, render the sentence obsolete. FINRA declines to delete this provision as it codifies existing guidance that FINRA believes remains appropriate.[59] Whether technological advances would render this provision obsolete in the future is an issue that FINRA will address when, and if, such technology exists.

NAIBD requested that FINRA acknowledge that a reviewer can be an electronic system. A reviewer may decide to use an electronic review system to assist with his or her review functions but the assigned supervisor/principal remains responsible for the adequacy of the review.

SIFMA and Janney requested that FINRA clarify what reasonable and appropriate standards would be sufficient to demonstrate overall supervisory control of delegated functions pursuant to proposed Supplementary Material .10 (Delegation of Correspondence and Internal Communication Review Functions). What may be reasonable and appropriate for each firm will depend on the firm's size, business, structure, etc. Members should look to these factors to determine how they should structure their procedures to demonstrate adequate supervision of delegated functions.

Finally, PIABA requested that FINRA expand the record retention period in proposed Supplementary Material .11 (Retention of Correspondence and Internal Communications) to six years to match the eligibility provisions for customer arbitration disputes in FINRA Rule 12206 (Time Limits). The proposed rule purposefully aligns the record retention period for communications with the SEC's record retention period for the same types of communications to achieve consistent regulation in this area. Accordingly, FINRA declines to extend the record retention period beyond the three-year period stipulated in Rule 17a–4(b) of the Act.[60]

(k) Comments on Proposed FINRA Rule 3110(b)(5)

One commenter questioned the necessity of proposed FINRA Rule 3110(b)(5) as proposed FINRA Rule 3110(b)(4) would require members to review communications to ensure that customer complaints are identified and handled in accordance with a member's supervisory procedures.[61] Proposed FINRA Rule 3110(b)(5) makes clear that members have an affirmative obligation to capture, acknowledge, and respond to every written customer complaint. The review requirement in proposed FINRA Rule 3110(b)(4) supplements this affirmative responsibility.

Another commenter, SIFMA, supported proposed FINRA Rule 3110(b)(5), including the decision to include only written customer complaints. PIABA, on the other hand, argued that members should be required to reduce an oral complaint to writing or to provide the customer with a form. As stated previously, the proposed rule change does not include oral complaints because they are difficult to capture and assess, whereas members can more

[55] Charles Schwab.

[56] In a related comment, several commenters requested that FINRA move the proposed supplementary material regarding the use of risk-based review and delegation of review into the body of proposed FINRA Rule 3110(b)(4). SIFMA, Janney, Baum, Cornerstone Financial, Nationwide Financial, Great American Advisors, FSI. As previously explained, the proposed supplementary material is part of the proposed rule.

[57] SIFMA, Janney.

[58] Cornerstone Financial, Nationwide Financial, Great American Advisors, FSI, NAIBD, ING.

[59] *See Regulatory Notice* 07–59 (December 2007).

[60] 17 CFR 240.17a–4(b).

[61] ING.

readily capture and assess written complaints. FINRA encourages members to provide customers with a form or other format that will allow customers to detail their complaints in writing. However, as noted above, FINRA reminds members that the failure to address any customer complaint, written or oral, may be a violation of FINRA Rule 2010.

A couple of commenters were concerned with the requirement that members ''acknowledge'' customer complaints. One commenter argued that this would be a new requirement for firms currently required to comply only with NASD rules.[62] Another commenter questioned the relevancy of requiring firms to acknowledge complaints when the proposed rule does not include the Incorporated NYSE Rule 401A requirement to do so within 15 days.[63] While FINRA acknowledges that this would be a new requirement for many FINRA members, the investor protection that this provision would provide outweighs any potential compliance burdens. Finally, the absence in the proposed rule of a specific time period in which members must acknowledge their receipt of customer complaints provides members a certain amount of flexibility in designing their supervisory procedures. Members, however, would be expected to explain the reasonableness of a period in excess of 30 days.

(l) Comments on Proposed FINRA Rule 3110(b)(6)

Commenters generally supported FINRA's proposal to eliminate NASD Rule 3012's producing manager supervision requirements.[64] Nevertheless, some commenters requested clarification and guidance regarding certain aspects of the proposed supervisory requirements that would replace the current producing manager supervision provisions.

One commenter, concerned about the meaning of the term ''supervisory function,'' asked FINRA whether an associated person performing a supervisory function needed to be a principal.[65] The proposed rule language does not impose a registration requirement. Whether an associated person performing a supervisory function should be licensed as a principal depends on whether the person is acting in a capacity that requires principal registration.[66] Furthermore, the term ''supervisory function'' does not have a static definition. Whether an associated person is performing a supervisory function depends on the member's supervisory structure and the associated person's assigned duties. Members may delegate supervisory functions to associated persons who are not registered principals. However, FINRA expects members to supervise those persons in accordance with proposed FINRA Rule 3110(b)(6).

One commenter asked why a member's written supervisory procedures should prohibit a supervisor from engaging in conduct (supervising one's own activities and reporting to, or having compensation determined by, a person being supervised) when such conduct is not expressly prohibited by any other FINRA rule.[67] The same commenter also questioned how a member should apply the prohibitions to certain supervisory personnel, such as finance, continuing education, and registration supervisors, who supervise people who could ''affect'' the supervisors' compensation. Other commenters requested, without explanation, that ''home office personnel'' be exempted from the prohibitions.[68]

The proposed supervisory requirements are designed to prevent supervisory situations from occurring that regulators previously have found do not lead to effective supervision.[69] Additionally, the requirement to have supervisory procedures prohibiting a supervisor from supervising one's own activities and reporting to, or having compensation determined by, a person being supervised also serves as the general substantive prohibition against that conduct.[70] However, FINRA understands, and has provided a limited exception for, certain situations and member business models (*i.e.,* senior executive management and/or sole proprietors) where, for example, it is not possible to avoid having someone supervise his or her own activities or supervise someone who determines (not merely ''affects'') his or her compensation. FINRA believes that this exception provides sufficient flexibility for a member to design an appropriate supervisory system for all of its supervisory personnel, irrespective of their place in the member's organizational structure.

Two commenters also requested that FINRA add rule language explaining that a supervisor receiving commission overrides does not equate to having ''compensation determined by'' a person who is supervised.[71] FINRA does not believe that additional rule language is necessary. Although a supervised person may affect his or her supervisor's compensation (through overrides or in other ways), proposed FINRA Rule 3110(b)(6)(C) concerns only those situations where a supervised person directly controls a supervisor's compensation or continued employment. In this context, however, the member would still need to address this conflict in its procedures pursuant to proposed FINRA Rule 3110(b)(6)(D).

Several commenters questioned the necessity of proposed FINRA Rule 3110(b)(6) given the requirement that a member's supervisory system and written procedures be reasonably designed to achieve compliance with applicable securities laws and regulations and SRO rules.[72] As noted above, proposed FINRA Rule 3110(b)(6), among other things, requires members to address conflicts of interest that may reduce the standards of supervision applicable to an associated person. Serious conflicts of interest have, in the past, caused diminished supervision standards that, in turn, have resulted in inadequate supervision. Accordingly, FINRA believes that supervisory procedures to address potential conflicts of interest are necessary.

Several commenters suggested that the standards within FINRA Rule 3110(b)(6) (*e.g.,* procedures ''to prohibit'' supervisory personnel from supervising their own activities and to prevent supervision from being ''lessened in any manner'' due to conflicts of interest) should be changed to ''a reasonably designed'' standard. As noted previously, proposed FINRA Rule 3110(b) already requires that members have procedures that are reasonably designed to achieve compliance with the applicable laws, regulations, and SRO rules. To alter the standards within the rule that describe the outcome the procedures should try to achieve suggest an impermissible relaxation of the standard around which the rule is

[62] Charles Schwab.

[63] ING.

[64] ProEquities, NAIBD, Charles Schwab, SIFMA.

[65] CCS.

[66] *See* NASD Rule 1021.

[67] ING.

[68] Cornerstone Financial, Nationwide Financial, FSI.

[69] *See SEC* v. *Frank D. Gruttadauria,* Civil Action No. 1:02CV324 (N.D. Ohio Apr. 23, 2004), SEC Litigation Release No. 17369 (Feb. 21, 2002).

[70] FINRA also notes that the SEC has consistently recognized that FINRA rules do not generally permit someone to supervise his or her own activities. *See, e.g., Bradford John Titus,* 52 S.E.C. 1154, 1158 (1996) (compliance director held liable, under FINRA (then NASD) rules, for supervisory failure based on finding that salesperson, who was operating as independent contractor out of two-person ''non-branch'' office, could not supervise himself).

[71] Cornerstone Financial, FSI.

[72] Janney, Charles Schwab, SIFMA.

designed. FINRA, however, has revised proposed FINRA Rule 3110(b)(6) to clarify that a member must have procedures to prevent the standards of supervision required pursuant to proposed FINRA Rule 3110(a) from being reduced in any manner due to any conflicts of interest that may be present.

(m) Comments on Proposed FINRA Rule 3110(b)(7) and Proposed Supplementary Material .13

Commenters requested clarification regarding several aspects of proposed FINRA Rule 3110(b)(7), which requires each member to keep and maintain a copy of its written supervisory procedures at each OSJ and at each location where supervisory activities are conducted. Specifically, several commenters requested that FINRA clarify whether members can electronically maintain their written supervisory procedures and also electronically communicate to their associated persons any amendments or updates to the written supervisory procedures.[73] One commenter also suggested that it would be inappropriate to communicate a written supervisory procedures amendment throughout the firm if the amendment was relevant only to a limited business line or set of associated persons.[74]

Written supervisory procedures are records subject to the recordkeeping requirements of Exchange Act Rule 17a–4,[75] which permits a member to store records electronically so long as they are accessible. However, in response to commenters' concerns regarding the use of electronic means to communicate written supervisory procedures amendments to their associated person, FINRA has added proposed Supplementary Material .13 (Use of Electronic Media to Communicate Written Supervisory Procedures), which clarifies that a member may electronically amend and distribute its written supervisory procedures as long as the member meets certain conditions (*e.g.,* providing easy access to the written supervisory procedures, promptly posting written supervisory procedures amendments, and notifying associated persons of the amendments).

(n) Comments on Proposed FINRA Rule 3110(c)

(1) Flexibility To Conduct Location Inspections

Several commenters raised concerns regarding the flexibility members have in conducting location inspections.[76] In particular, four commenters expressed concern regarding the three-year presumption in proposed Supplementary Material .15 (General Presumption of Three-Year Limit for Periodic Inspection Schedules) for inspecting non-branch locations (also referred to as ''unregistered locations'').[77] While one commenter expressed concern that the presumption would be interpreted as a ''three-year pass,'' [78] two other commenters viewed the presumption as becoming a de facto three-year requirement.[79] These same two commenters suggested that the proposed rule include a risk-based inspection scheme similar to that in Incorporated NYSE Rules 342.24 and 342.25, arguing that, otherwise, Dual Members will be forced to change inspection programs previously approved by the NYSE permitting firms to conduct branch office examinations less frequently than once each calendar year.

FINRA believes the timing requirements for location inspections in proposed FINRA Rule 3110(c)(1), which are carried over from the existing NASD requirements, are appropriate and provide all members with sufficient flexibility to meet their inspection requirements. In addition, irrespective of any annual branch office inspection exemptions that may have been granted by the NYSE pursuant to NYSE Rule 342.24, Dual Members have always been required to comply with the annual inspection requirements for supervisory branch offices pursuant to NASD Rule 3010(c)(1)(A).

Regarding the periodic inspection of non-branch locations, proposed Supplementary Material .15 does not set forth either a three-year requirement or a three-year gap between inspections. The proposed supplementary material merely establishes a three-year presumption and provides members with the flexibility to use a periodic inspection schedule that is either shorter or longer than three years. Members may choose to examine non-branch locations more frequently than every three years if the member determines such examinations are necessary to detect and prevent violations of, and achieve compliance with, applicable securities laws and regulations and with applicable FINRA and MSRB rules. Conversely, if a member chooses to use a periodic inspection schedule that is longer than three years, then the proposed supplementary material requires the member to properly document the factors used in determining the appropriateness of the longer schedule.[80]

(2) Reliance on Existing Guidance Regarding Unannounced Inspections

One commenter asked that FINRA clarify the continued viability of those sections of *Notices to Members* 99–45 (June 1999) and 98–38 (May 1998) alerting members to specific SEC cases where the SEC found one pre-announced annual inspection of unregistered locations to be an inadequate discharge of a firm's supervisory obligations for those locations.[81] As indicated by the commenter, these portions of the referenced *Notices* alerted members to SEC decisions regarding the failure to adequately supervise unregistered locations. Although this is not FINRA guidance, these SEC decisions continue to provide valuable information that firms may wish to consider when establishing inspection cycles for unregistered locations. The actual guidance in the referenced *Notices* is applicable unless overridden by the content of proposed rules.

FINRA is not making any changes to proposed FINRA Rule 3110(c)(1) in response to the comments received.

(3) Minimum Content Requirements of Inspection Reports

Several commenters argued that a location's written inspection report should not have to include the testing and verification of a member's policies and procedures for all of the activities enumerated in proposed FINRA Rule 3110(c)(2)(A)(i) through (v) (*e.g.,* transmittals of funds and securities, changes of customer account information, safeguarding of customer funds and securities, supervision of supervisory personnel, maintaining books and records) if that location did

[73] Cornerstone Financial, Great American Advisors, FSI, SIFMA, Baum, ING.

[74] Charles Schwab.

[75] 17 CFR 240.17a–4.

[76] Janney, SIFMA.

[77] Janney, SIFMA, CAI, Nekvasil.

[78] Nekvasil.

[79] Janney, SIFMA.

[80] National Planning requested that this documentation appear in a member's written supervisory procedures. However, FINRA believes that such documentation is more appropriate in an inspection report for a particular location because it explains why a member established a longer periodic inspection schedule for a particular location.

[81] NAIBD.

not conduct all of those activities.[82] In response to these concerns, FINRA has amended the proposed rule language to make clear that a location's inspection report has to include the testing and verification of only those enumerated activities conducted by the location.

One commenter suggested that the proposed customer confirmation requirements for transmittals of funds and securities and changes of customer account information be moved to another section of the proposed rule as they did not pertain to the internal inspection requirements.[83] FINRA disagrees. It is clear from the proposed rule text that the customer confirmation requirements must be included in the policies and procedures for the transmittals of funds and securities and changes of customer account information that a member must test and verify during its inspection of any location at which those activities are performed.

This commenter also objected as ''unnecessarily broad'' the proposed requirement to test and verify the policies and procedures regarding a location's supervision of its supervisory personnel and argued that this language could potentially include off-site supervisory personnel who supervise a branch office manager's activities. FINRA, however, does not view this requirement as overly broad. Rather, the provision is intended to further ensure that the activities of supervisory personnel are subject to supervision, and FINRA would expect, for example, an inspection report to address, as applicable, off-site supervision of the branch office manager's activities.

One commenter asked whether anything other than an account statement would be appropriate to comply with the requirement in proposed FINRA Rule 3110(c)(2)(B) to provide a means or method of customer confirmation for transmittals of customer funds and securities.[84] Additionally, the commenter requested guidance on how to comply with the proposed requirement that members test and verify procedures for the transmittal of funds, especially the hand-delivery of checks. The proposed requirements are already existing requirements of NASD Rule 3012 that FINRA is moving into proposed FINRA Rule 3110. As such, members should already be aware of how to comply with these requirements. Additionally, FINRA has previously provided guidance in *Notice to Members* 05–08 (January 2005) regarding the appropriate means or method of customer confirmation, notification, or follow-up that members should use to comply with this requirement. That guidance remains applicable to the relocated provisions. FINRA does not believe additional guidance is necessary.

Commenters also objected to the rule requirement, as originally proposed in the *Notice,* requiring a member to identify in its written supervisory procedures the activities in which it does not engage.[85] In response to these concerns and the proposed changes made above, FINRA has amended the proposed rule change to retain the requirement that a member identify in a location's written inspection report any enumerated activities the member does not engage in at that location and document in that location's report that the member must have in place at that location supervisory policies and procedures for those activities before the location can engage in them.

(4) Associated Persons Who May Conduct Inspections

Several commenters questioned whether the proposed requirement that a location be inspected by someone who is not an associated person assigned to that location or is not supervised by an associated person assigned to that location would require members to hire outside consultants to conduct inspections.[86] FINRA believes that the proposed rule change, similar to existing NASD Rule 3010(c), provides members with sufficient flexibility to conduct their inspections using only firm personnel.[87] Pursuant to the proposed rule, a member that determines it cannot comply with the restriction, either because of its size or business model, must document in the inspection report the factors the member used to make its determination and how the inspection otherwise comports with proposed FINRA Rule 3110(c)(1).

One commenter requested that FINRA permit members to rely on the exception described above for home office personnel conducting home office inspections.[88] As noted in proposed Supplementary Material .16 (Exception to Persons Prohibited from Conducting Inspections), a member's determination that it cannot meet the requirement on who can conduct a location's inspection will generally arise only in instances where a member has only one office or has an independent contractor business model. However, this general presumption does not prohibit a member from relying on the exception in other instances provided it complies with the conditions in proposed FINRA Rule 3110(c)(3)(C).

(5) Preventing Conflicts of Interest from Lessening an Inspection

Some commenters have argued that the proposed rule's requirement that members prevent conflicts of interest from lessening an inspection in any manner is vague and overly broad and should be altered to a ''reasonably designed'' standard.[89] One commenter also suggested that firms be permitted to design their own procedures to safeguard against conflicts of interest. The proposed requirement does not pertain to a member's supervisory procedures, which a member must ''reasonably design'' to achieve compliance with applicable Federal laws and regulations and SRO rules. Instead, it defines a standard around which inspections must be conducted. The proposed requirement does not prohibit conflicts of interest. Additionally, FINRA has revised the proposed rule text to make clear that a member, for each inspection, must prevent the inspection standards required pursuant to proposed FINRA Rule 3110(c)(1) from being reduced in any manner due to any conflicts of interest that may be present.

(o) Comments on Proposed Supplementary Material .14 (Standards for Reasonable Review)

Several commenters suggested that proposed Supplementary Material .14 be amended to adopt a ''reasonably designed to ensure'' standard.[90] Another commenter suggested that the experience of a representative and/or length of service of a representative with the firm be added as a factor to be considered in determining the reasonableness of review for one-person

[82] Cornerstone Financial, Great American Advisors, FSI, ING (referring to activities in proposed FINRA Rule 3110(c)(2)(A)(i) through (v)).

[83] Charles Schwab.

[84] ING.

[85] Thornburg, Charles Schwab.

[86] Nationwide Financial, Cornerstone Financial, Great American Advisors, FSI.

[87] Charles Schwab also argued that the proposed restriction would prevent personnel based in the same location from inspecting other business units at the same location. To the extent that this comment refers to business departments within a location, the proposed restriction pertains only to office (both registered and unregistered) location inspections. If the comment is referring to multiple locations within one geographical place, a member may use personnel from one location in a particular setting to inspect another location in that same setting.

[88] ING.

[89] LPL, Cornerstone Financial, Great American Advisors, Janney, FSI, Charles Schwab, NSCP, SIFMA.

[90] Cornerstone Financial, Great American Advisors, FSI.

or small remote locations.[91] Proposed Supplementary Material .14 transfers NASD IM–3010–1 with minor changes into the Consolidated FINRA Rulebook. NASD IM–3010–1 was adopted in connection with the uniform branch office definition in 2005 after several years of discussions with the NYSE, NASAA, and NASD. As such, FINRA does not believe that this provision should be further modified at this time. Additionally, FINRA notes the factors listed are not exhaustive, and no single factor is dispositive. Members can and should consider additional factors that are relevant to their business model.

(p) Comments on Proposed FINRA Rule 3110(d)

FINRA received numerous comments on the proposal to require members to include in their supervisory procedures a process for the review of securities transactions that are effected for the accounts of the member and certain accounts of associated persons of the member and their family members to identify trades that may violate the Federal securities laws, rules thereunder, or FINRA rules. The provision was originally proposed in *Regulatory Notice* 08–24 as supplementary material to proposed FINRA Rule 3110; however, as reflected above, FINRA has amended the proposed rule change so that the provision is now contained in the rule as proposed FINRA Rule 3110(d) (Transaction Review and Investigation) rather than as supplementary material. As described below, FINRA made several other changes to the rule in response to comments.

(1) Scope of Provision

Several commenters expressed concern that the proposed provision was too broad in that it failed to recognize different types of business models or to account for transactions in securities such as mutual funds or variable contracts that do not raise the types of concerns addressed by the rule.[92] Other commenters believed the provision was overly broad, vague, or inconsistent with existing FINRA Rules, such as NASD Rule 3050.[93]

As noted above, proposed FINRA Rule 3110(d) is intended to help members comply with their existing obligations under Section 15(g) of the Act,[94] which requires all registered brokers or dealers to ''establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of [the Act] * * * or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.'' FINRA recognizes that not all members will have the same procedures and that not all transactions present the same risks. Consistent with the requirements of Section 15(g) of the Act and proposed FINRA Rule 3110(b), the procedures adopted by the member would need to be reasonably designed to prevent violations of the Act, the rules thereunder, and FINRA rules prohibiting insider trading and manipulative and deceptive devices. Accordingly, each member's procedures should take into consideration the nature of the member's business, which includes an assessment of the risks presented by different transactions and different departments within a firm. Thus, while some members may need to develop restricted lists and/or watch lists, other members may only need to periodically review employee and proprietary trading. Like the incorporated NYSE rule on which the proposal is based, there is no requirement that a member examine every trade of every employee or every proprietary trade.

(2) Family Member and Other Accounts

One commenter stated that, as proposed in *Regulatory Notice* 08–24, the proposal would require family members of persons associated with a member to hold their accounts at the associated person's firm.[95] Other commenters suggested changes to the rule to include those accounts in which the associated person of the member had a beneficial interest or accounts over which an associated person of the member had control.[96] In response to these comments, FINRA has revised the text in the proposed rule change regarding a member's responsibility to monitor trading in certain accounts of an associated person of a member and his or her family members. As revised, the proposed rule change would require a member to review the account activity of any account held by the spouse, child, son-in-law, or daughter-in-law of a person associated with the member where such account is introduced or carried by the member, not every family member of a person associated with the member. In addition, the revised proposed rule change would require members to review any account in which a person associated with the member has a beneficial interest and any account over which a person associated with the member has the authority to make investment decisions. This revised language is based, in large part, on the obligations established by the NYSE in *Information Memo* 88–21 (July 28, 1988) regarding the accounts of certain family members of persons associated with a member and accounts in which the associated person has an interest or has the power, directly or indirectly, to make investment decisions. Finally, proposed FINRA Rule 3110(d) does not require family members of persons associated with a member to hold their accounts at the associated person's firm.

(3) Required Reports

Several commenters expressed concern with the provision in the proposed rule change requiring that members that engage in investment banking activities report to FINRA the status of internal investigations.[97] Although some commenters supported the quarterly report requirement, but not the additional reporting requirements,[98] another commenter believed the reports were unnecessary in light of information reported to FINRA pursuant to NASD Rule 3070[99] (to be replaced by FINRA Rule 4530 (Reporting Requirements, effective July 1, 2011)).[100]

FINRA believes that the proposed rule change strikes the appropriate balance by only requiring certain members to report information (*i.e.,* those members that conduct investment banking activities). Additionally, unlike FINRA Rule 4530,[101] the proposed rule change would require more targeted and detailed reporting, following a review of whether a securities transaction effected for the account(s) of the member, the member's associated person, or other covered account may have violated the Exchange Act or FINRA rules prohibiting insider trading and manipulative and deceptive devices.

[91] Nekvasil.

[92] CAI, Liberty Life, NSCP, PFS, Thornburgh.

[93] FSI, ING.

[94] 15 U.S.C. 78*o*(g).

[95] ING. Another commenter requested that FINRA clarify the term ''family member'' if the provision was not removed. Charles Schwab.

[96] FSI, Northwestern Mutual.

[97] Janney, NSCP, Charles Schwab, SIFMA,

[98] Janney, SIFMA.

[99] Charles Schwab.

[100] *See supra* note 9.

[101] FINRA Rule 4530 is based in large part on NASD Rule 3070 and takes into account requirements under NYSE Rule 351, including the requirement that the firm report whenever the firm has concluded on its own that an associated person of the firm or the firm itself has violated any securities, insurance, commodities, financial or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or SRO. *See* FINRA Rules 4530(b) and 4530.01.

Such information would include reporting the initiation of an investigation (including such information as the identity of the member, the date the internal investigation commenced, and the identity of the security, trades, accounts, associated persons, or associated person's family members holding a covered account, under review), a quarterly report providing progress of any open investigation, and a written report detailing the completion of an investigation, including the investigation's results. Providing such detailed information, even if a member's investigation does not uncover violations in association with the suspected securities transactions, could prove vital to FINRA in connecting the underlying conduct to other conduct about which the member may not know. Thus, FINRA believes that the reporting obligations pursuant to the proposed rule change are necessary to help protect investors and market integrity.

(q) Comments on Proposed FINRA Rule 3110(e)

Two commenters requested that FINRA make several amendments to the definition of the term ''branch office'' in proposed FINRA Rule 3110(e).[102] Both commenters stated that additional exemptions from branch office registration need to be established for certain categories of activities. Specifically, one of the commenters asked that FINRA add an exemption from branch office registration for wholesalers of mutual funds who use their primary residences for business purposes but do not meet with customers at such locations.[103] The other commenter asked that FINRA add an exemption from branch office registration for certain non-U.S. locations because registration can create potentially adverse consequences for the member in the local jurisdiction.[104] FINRA notes that the definition of branch office is being transferred unchanged from current NASD Rule 3010(g)(2). The uniform branch office definition was developed in 2005 after several years of discussions with the NYSE, NASAA, and NASD. As such, FINRA believes the current definition provides appropriate exemptions from registration, and such exemptions should not be expanded at this time.

[102] Nationwide Financial, SIFMA.

[103] Nationwide Financial.

[104] SIFMA.

(r) Comments on Proposed FINRA Rule 3120

All of the comments FINRA received regarding proposed FINRA Rule 3120 addressed the new provisions concerning the report requirements in paragraph (b). As noted above, these requirements are based on provisions that had previously been adopted by the NYSE; however, FINRA determined to apply the requirements only to members that reported $150 million or more in gross revenue on their FOCUS reports for the previous year.

Several commenters noted that the requirements would impose new burdens on certain FINRA members that had previously been members of only NASD and would continue to impose a burden for certain firms that had previously created the report under the Incorporated NYSE Rule.[105] Commenters also questioned the need for the report,[106] and several commenters suggested that the report was duplicative of existing requirements.[107] Finally, several commenters suggested that the $150 million revenue threshold was inappropriate.[108] One commenter suggested that all members be required to include the supplemental information in the report, not merely those members reporting more than $150 million in revenue.[109]

As FINRA stated in *Regulatory Notice* 08–24, FINRA believes that the additional information required of members with more than $150 million in gross revenue will prove to be valuable information for FINRA's regulatory program, in addition to being valuable compliance information for the senior management of the firm. FINRA recognizes the burden the additional content requirements may place on some members and, as a result, proposed only requiring certain members to include the specific information listed in paragraph (b) of the proposed rule in their reports. Although FINRA considered several alternative metrics (*e.g.,* number of registered persons), FINRA attempted to balance the value of the information with the burden and determined that using a gross revenue threshold of $150 million struck the appropriate balance. The metric also is easily determined by reference to the member's most recent annual FOCUS report.

With respect to the specific supplemental information required in the report, for members reporting more than $150 million in gross revenue, the proposed rule requires that those reports include the preceding year's compliance effort in seven areas: Trading and market activity, investment banking activities, antifraud and sales practices, finance and operations, supervision, anti-money laundering, and risk management. In addition, the report is required to include a tabulation of the reports made to FINRA in the previous year regarding customer complaints and internal investigations. As noted above, several commenters stated that some of the information (such as the tabulation of customer complaints) was duplicative of existing requirements while other information was too broad or could be outside the scope of a member's compliance structure (such as risk management or finance). The proposed requirements to include a tabulation of information provided to FINRA regarding complaints and internal investigations are not duplicative of existing requirements. Whereas FINRA Rule 4530 requires reporting certain information to FINRA, the requirement in proposed FINRA Rule 3120(b) covers information required to be provided to a firm's senior management. Thus, each rule serves a distinct purpose.

Several commenters also suggested that the provisions in proposed FINRA Rule 3120 are duplicative of requirements in NASD Rule 3013 and IM–3013.[110] FINRA disagrees. Paragraph (b) of proposed FINRA Rule 3120 does not create a new report requirement; it merely specifies several specific topics that the report (already required under NASD Rule 3012) must address for firms reporting $150 million or more in gross revenue. Since the adoption of NASD Rules 3012 and 3013, FINRA has addressed the issue regarding the interplay between the requirements of NASD Rules 3012 and 3013, noting that the requirements are complementary, not duplicative. For example, in *Notice to Members* 04–71 (October 2004), FINRA stated that the supervisory system required under NASD Rule 3010 results from the processes that are the subject of certification under FINRA Rule 3130.

[105] Cornerstone Financial, FSI, Great American Advisors, Janney, SIFMA.

[106] Charles Schwab, ING, SIFMA.

[107] FSI, Northwestern Mutual, Charles Schwab, ING, Wachovia Securities.

[108] Cornerstone Financial, GAA, FSI, CAI, ING, Charles Schwab.

[109] PIABA.

[110] The SEC approved the adoption of NASD Rule 3013 and IM–3013 into the Consolidated FINRA Rulebook as FINRA Rule 3130. *See* Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (Order Approving File No. SR–FINRA–2008–030). The rule became effective on December 15, 2008. *See Regulatory Notice* 08–57 (October 2008).

NASD Rule 3012 (proposed FINRA Rule 3120) requires members to have supervisory control procedures to test and verify that the member's supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules, as well as to, where necessary, amend or create new supervisory procedures. This same relationship between the rules (proposed FINRA Rules 3110 and FINRA Rule 3120) remains present.

With respect to the specific topics covered by the rule, although most were taken from the existing provisions of Incorporated NYSE Rule 342.30, FINRA determined to add risk management as a required area of discussion in the report. For those firms that did not have compliance efforts in that area (or in any of the enumerated areas) during the year covered by the report, the report should so state.

Finally, one commenter stated that ''it should be clear that such 'testing and verification' also may be risk-based in light of the member's particular business and circumstances.'' [111] The commenter also suggested that the language in the proposed rule be changed from ''test and verify'' to ''regularly test or otherwise monitor.'' FINRA has previously provided guidance in *Notice to Members* 05–29 (April 2005) regarding a member's ability to use risk-based methodologies and sampling to test a subset of policies and procedures annually when conducing the testing and verification required by NASD Rule 3012. That guidance remains applicable to proposed FINRA Rule 3120. FINRA does not believe additional guidance or rule text is necessary.

(s) Comments on Proposed FINRA Rule 3150

FINRA received several comments on proposed FINRA Rule 3150 regarding the holding of customer mail. One commenter requested clarification that members are not required to hold a customer's mail if, for example, the member lacks the systems, processes, and personnel to provide this service.[112] Proposed FINRA Rule 3150, like NASD Rule 3110(i), does not impose an obligation on members to hold a customer's mail upon request. Rather, the rule establishes minimum requirements if a member does provide this service to its customers.

Three commenters expressed concern regarding the requirement that a member holding a customer's mail be able to communicate with the customer in a timely manner during the time the member is holding the customer's mail.[113] All three commenters noted that mail is often held by a member because the customer is unreachable (*e.g.,* when the customer is overseas or in active military service). These commenters also requested that the rule include a specific time limit rather than requiring that a member periodically verify the customer's instructions if the customer instructs the member to hold his or her mail for ''an extended time.''

Under NASD Rule 3110(i), a member is prohibited from holding a customer's mail for more than two months if the customer is on vacation or traveling, or for more than three months if the customer is going abroad. FINRA determined to eliminate the specific maximum time periods from the rule and allow members to create appropriate procedures regarding the holding of customer mail; however, to ensure that a member does not hold a customer's mail indefinitely, FINRA has clarified in the proposed rule that members must receive written instructions from the customer that include the time period during which the member is requested to hold the customer's mail. Additionally, if the requested time period included in the instructions is longer than three consecutive months (including any aggregation of time periods from prior requests), the customer's instructions must include an acceptable reason for the request (*e.g.,* safety or security concerns). Convenience is not an acceptable reason for holding mail longer than three months. Proposed FINRA Rule 3150 also requires members to periodically verify the customer's instructions if they agree to hold mail for that customer for an extended time. As noted above, there is no requirement that members hold customer mail at all, and there is similarly no restriction on a member's ability to limit the time period it offers to hold mail for a customer. Consequently, FINRA believes that providing each member with the flexibility to devise a system that best meets the member's capabilities and the customers' needs is appropriate. Thus, for example, if a member knows a customer will be unreachable, the member may reasonably agree not to hold that customer's mail for more than a specified time or may agree to hold mail only if the customer will be reachable.

Three commenters recommended that FINRA revise the standard for holding customer mail so that rather than a requirement that members ''take actions reasonably designed to ensure that the customer's mail is not tampered with, held without the customer's consent, or used by an associated person of the member in any manner that would violate'' applicable laws, members only be required to ''take actions reasonably designed to avoid tampering with the customer's mail.'' [114] FINRA believes that the current standard in the proposal is the correct standard. If a member chooses to hold a customer's mail, FINRA believes that the member must accept responsibility for the protection of any information in that mail and take reasonable steps to prevent the misuse of that information.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–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–FINRA–2011–028. This file number should be included on the

[111] Baum.

[112] NSCP.

[113] Cornerstone Financial, Great American Advisors, FSI.

[114] Cornerstone Financial, Great American Advisors, FSI.

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 FINRA. 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–FINRA–2011–028 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[115]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16232 Filed 6–28–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12530 and #12531]

North Carolina Disaster Number NC–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1969–DR), dated 04/19/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/16/2011.

Effective Date: 06/20/2011.

Physical Loan Application Deadline Date: 07/05/2011.

EIDL Loan Application Deadline Date: 01/20/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of North Carolina, dated 04/19/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 07/05/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–16236 Filed 6–28–11; 8:45 am]

BILLING CODE 8025–01–P

Small Business Administration

[Disaster Declaration #12576 and #12577]

Missouri Disaster Number MO–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1980–DR), dated 05/09/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/19/2011 through 06/06/2011.

Effective Date: 06/21/2011.

Physical Loan Application Deadline Date: 07/08/2011.

EIDL Loan Application Deadline Date: 02/09/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Missouri, dated 05/09/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Carter, Lawrence, Wayne

Contiguous Counties: (Economic Injury Loans Only): Missouri, Greene.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator or Disaster Assistance.

[FR Doc. 2011–16237 Filed 6–28–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12599 and #12600]

Kentucky Disaster Number KY–00040

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1976–DR), dated 05/19/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/12/2011 through 05/20/2011.

Effective Date: 06/20/2011.

Physical Loan Application Deadline Date: 07/18/2011.

EIDL Loan Application Deadline Date: 02/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of KENTUCKY, dated 05/19/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:(Physical Damage and Economic Injury Loans): Floyd.

All contiguous counties have previously been declared.

All other information in the original declaration remains unchanged.

[115] 17 CFR 200.30–3(a)(12).

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–16238 Filed 6–28–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #12566 and #12567

Kentucky Disaster Number KY–00039

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 8.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA–1976–DR), dated 05/04/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/12/2011 through 05/20/2011.

Effective Date: 06/20/2011

Physical Loan Application Deadline Date: 07/05/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Kentucky, dated 05/04/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Marion.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–16239 Filed 6–28–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12643 and #12644]

Vermont Disaster Number VT–00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–1995–DR), dated 06/15/2011.

Incident: Severe Storms and Flooding.

Incident Period: 04/23/2011 through 05/09/2011.

Effective Date: 06/20/2011.

Physical Loan Application Deadline Date: 08/15/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 03/15/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Vermont, dated 06/15/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–16240 Filed 6–28–11; 8:45 am]

BILLING CODE 8025–01–P

Small Business Administration

[Disaster Declaration #12649 and #12650]

California Disaster #CA–00172

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–1968–DR), dated 06/20/2011.

Incident: Tsunami Waves.

Incident Period: 03/11/2011.

Effective Date: 06/20/2011.

Physical Loan Application Deadline Date: 07/20/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 01/20/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/20/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Del Norte, Monterey, Santa Cruz

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ..	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12649E and for economic injury is 12650E.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–16241 Filed 6–28–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12647 and # 12648]

Oklahoma Disaster # OK–00052

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for

the State of Oklahoma (FEMA–1989–DR), dated 06/21/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 05/22/2011 through 05/25/2011.

Effective Date: 06/21/2011.

Physical Loan Application Deadline Date: 08/22/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 03/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/21/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Blaine, Caddo, Canadian, Delaware, Grady, Jefferson, Kingfisher, Le Flore, Logan, Major, Mcclain, Osage.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ..	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12647B and for economic injury is 12648B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–16242 Filed 6–28–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12584 and # 12585]

Alabama Disaster Number AL–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–1971–DR), dated 04/28/2011 .

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/15/2011 through 05/31/2011.

Effective Date: 06/22/2011.

Physical Loan Application Deadline Date: 07/11/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/10/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Alabama, dated 04/28/2011, is hereby amended to correct the Physical Loan Application Deadline Date to 07/11/2011 and to correct the Economic Injury Loan Application Deadline Date to 02/10/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–16244 Filed 6–28–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 4, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2000–6796.

Date Filed: June 2, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 23, 2011.

Description: Application of Aerolineas Santo Domingo, S.A. (''ASD'') requesting renewal of its exemption and for a foreign air carrier permit, to conduct scheduled foreign air transportation of persons, property and mail between the Dominican Republic and United States. ASD also requests amendment of the exemption.

Docket Number: DOT–OST–2011–0106.

Date Filed: June 3, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 24, 2011.

Description: Application of Strategic Airlines Pty Ltd (''Strategic Airlines'') requesting the Department issue a foreign air carrier permit to enable Strategic Airlines, consistent with the open skies, U.S.-Australia Air Transport Agreement, to operate: (1) Scheduled foreign air transportation of persons, property, and mail from points behind Australia, via Australia and intermediate points, to a point or points in the United States, and beyond; (2) scheduled all-cargo services between any point or points in the United States and any point or points in any third country or countries; (3) charter foreign air transportation of persons, property, and mail between any point or points in Australia and any point or points in the United States, and between any point or points in the United States and any point or points in third countries provided that, except with respect to cargo charters, such services constitute part of a continuous operation that includes service at a point or points in Australia for the purpose of carrying local traffic between Australia and the United States; and (4) other charters. Strategic Airlines also requests: (1) Exemption authority, to the extent necessary and for an initial period of two years or until the requested permit is issued, to enable it to hold out and

provide the service described above; and (2) such additional or other relief as the Department may deem necessary or appropriate.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison .

[FR Doc. 2011–16269 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending June 11, 2011

The following applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0112.

Date Filed: June 8, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 2011.

Description: Application of Victory Jet, LLC requesting a certificate of public convenience and necessity authorizing it to engage in interstate air transportation of persons, property, and mail on a charter.

Docket Number: DOT–OST–2011–0114.

Date Filed: June 9, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 30, 2011.

Description: Application of Cyprus Airways Public Limited (''Cyprus Airways'') requesting a foreign air carrier permit and related exemption that would enable it to provide: (a) Foreign scheduled and charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) foreign scheduled and charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area (''ECAA''); (c) other charters pursuant to the prior approval requirements; and (d) transportation authorized by any additional route rights made available to European Community carriers in the future.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–16285 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 4, 2011

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2011–0103.

Date Filed: May 31, 2011.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Europe-South West Pacific, Mail Vote 684 Adoption, Composite Resolutions 017jj & 017h, e-Tariffs, 2–20 May 2011, Intended Effective Date: 1 September 2011.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–16283 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–27]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before July 19, 2011.

ADDRESSES: You may send comments identified by Docket Number *FAA–2011–0617* using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, Tyneka Thomas (202) 267–7626, or David Staples (202) 267–4058, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 22, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–0617.

Petitioner: Continental Airlines, Inc.

Section of 14 CFR Affected: 14 CFR § 121.317(d).

Description of Relief Sought: Continental Airlines, Inc. request an exemption § 121.317(d). This exemption, if granted, would allow Continental to operate 787 aircraft using a graphical placard in lieu of text for flight operations both inside and outside the United States.

[FR Doc. 2011–16277 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–28]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before July 19, 2011.

ADDRESSES: You may send comments identified by Docket Number *FAA–2011–0618* using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, Tyneka Thomas (202) 267–7626, or David Staples (202) 267–4058, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 22, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–0618.

Petitioner: Delta Air Lines, Inc.

Section of 14 CFR Affected: 14 CFR 121.333(e)(2).

Description of Relief Sought: Delta requests relief to allow an airplane following a cabin depressurization event to initially descend to 14,000 feet and subsequently descend to 10,000 feet no later than 30 minutes after the initial depressurization event, without carrying the additional supplemental oxygen that's required.

[FR Doc. 2011–16279 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project (Interstate Route 75 and adjacent road network and interchanges) in the Cities of Cincinnati, Arlington Heights, Evendale, Glendale, Lincoln Heights, Lockland, Reading, and Sharonville, in Hamilton County, Ohio. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 27, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Mark L. Vonder Embse, P.E., Major Projects Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio, 43215; *e-mail: mark.vonderembse@dot.gov; telephone:* (614) 280–6854; FHWA Ohio Division Office's normal business hours are 7:30 a.m. to 4 p.m. (eastern time). You may also contact Mr. Jay Hamilton, Project Manager, Ohio Department of Transportation, 505 South SR–741, Lebanon, Ohio 45036; *telephone:* (513) 933–6584.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following major highway improvement project in the State of Ohio: one additional through lane in each direction on I–75; changes in access for the following interchanges: Galbraith Road (modernize with full access), SR–126 (upgraded access but will lack two free-flow movements), Davis Street (off-ramp removed), Cooper Avenue (on and off-ramps removed), Anthony Wayne Avenue (on and off-ramps added via a new collector-distributor road), Shepherd Lane (modernized and upgraded to a full interchange), northbound collector-distributor at GE plant (removed and replaced with a local frontage road), southbound collector-distributor at GE plant (modernized and shortened), Mangham Drive (on and off-ramps with southbound collector-distributor at GE

plant will be removed), Glendale-Milford Road (improved operations and geometry), Sharon Road (improved capacity at ramp terminals). The total project length along I–75 is approximately seven and three-tenths (7.3) miles. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on March 18, 2010, in the FHWA Finding Of No Significant Impact (FONSI) issued on March 29, 2011, and in other documents in the FHWA administrative record. The EA, FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Ohio Department of Transportation at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 USC 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996].

7. *Wetlands and Water Resources:* Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued on: May 24, 2011.

Laura S. Leffler,

Division Administrator, Columbus, Ohio.

[FR Doc. 2011–16219 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0098]

The Federal Motor Carrier Safety Administration's 2011–2016 Strategic Plan: Raising the Safety Bar

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of draft strategic plan and request for comments.

SUMMARY: The FMCSA requests public comment on its draft strategic plan, *Federal Motor Carrier Safety Administration 2011–2016 Strategic Plan: Raising the Safety Bar.* This is FMCSA's second strategic plan since the Agency was established as a standalone administration within the Department of Transportation (DOT) in 2000. In keeping with DOT's and FMCSA's top priority safety, the draft strategic plan is shaped by three core principles: (1) Raise the bar to enter the motor carrier industry; (2) Maintain high safety standards to remain in the industry; and (3) Remove high-risk carriers, drivers and service providers from operation. The Agency's new 5-year Strategic Plan provides continuing direction for FMCSA to further reduce crashes, injuries, and fatalities related to commercial motor vehicles (CMVs), which include passenger carrier vehicles (*e.g.,* buses). We welcome and invite comments and feedback on FMCSA's future direction. Comments will be considered and incorporated as appropriate.

Comment Date: Comments are due July 29, 2011.

ADDRESSES: Your comments must be addressed to FDMS Docket ID No. *FMCSA–2011–0098,* and sent by any of the following methods:

- *Federal eRulemaking Portal:* the Federal Docket Management System (FDMS) address: *http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

Instructions: All submissions must include the Agency name and docket number (FMCSA–2011–0098) for this rulemaking. To avoid duplication, please use only one of these four methods. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please refer to the Privacy Act heading for further information.

Comments received after the comment closing date will be considered and incorporated as appropriate. For questions, see ''**FOR FURTHER INFORMATION CONTACT**'' below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may 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** notice published on January 17, 2008 (73 FR 3316) at *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Ms. Dee Williams, Chief, Strategic Planning

and Program Evaluation Division, telephone (202) 493–0192, or e-mail *dee.williams@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA was established as a separate administration within the United States Department of Transportation (DOT) on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159), with the safety mandate to reduce crashes, injuries, and fatalities involving commercial motor vehicles (CMVs).

FMCSA hosted a listening session to solicit input for the development of its new draft Plan. Participants were asked to provide input on key challenges facing the motor carrier industry, issues facing stakeholders, and concerns that should be considered by the Agency in developing its next 5-year Strategic Plan. The meeting was held on September 8, 2010 (75 FR 53015, August 30, 2010).

The new draft strategic plan*, The Federal Motor Carrier Safety Administration 2011–2016 Strategic Plan: Raising the Safety Bar,* is the Agency's second since its inception. The plan establishes a new strategic framework for how FMCSA will continue to carry out its mission, top priority, and mandate—Safety—and places a greater emphasis on the overall CMV transportation life-cycle.

The CMV transportation life-cycle concept encompasses the whole CMV transportation system, including all the entities that control or influence the operation of CMVs, and focuses on the specific responsibilities of each party involved in the transport and logistics supply chain in improving CMV safety factors. This is a holistic view of safety that includes factors such as CMV and passenger-vehicle driver behavior, compliance systems, quality of roads, and vehicle technologies. This life-cycle approach will directly address CMV transportation challenges affecting drivers, vehicles, infrastructure, and the management of operations. Individuals, organizations, agencies, and other entities that are part of the CMV transportation life-cycle need to be aware of their impact on CMV safety and take responsibility for that impact.

The Agency's goals and strategies developed under its new five-year Plan are grouped into four strategic focus areas:

CMV Safety 1st Culture: Deliver comprehensive safety programs and promote operating standards focused on fostering safety as the highest priority within the CMV transportation life-cycle. Recognize that, while safety is FMCSA's highest priority, the Agency must also foster other important societal goals within the CMV transportation industry, including security, hazmat safety, consumer protection, and other DOT objectives.

Exponential Safety Power (Safety^X Power): Establish new partnerships and develop policies and programs promoting opportunities to collaborate with all stakeholders on CMV safety interventions. Build a coordinated network of safety partners and stakeholders to advance a common safety agenda.

Using Comprehensive Data & Leveraging Technology: Improve standards and systems to identify, collect, evaluate, and disseminate real-time performance data to all employees, customers, partners and stakeholders. Leverage research and emerging technologies to positively impact CMV transportation safety.

One FMCSA: Improve the strategic management of programs and human capital within FMCSA to build and sustain a diverse workforce and to develop innovative solutions to the CMV transportation challenges of today and tomorrow.

Request for Comments

FMCSA requests comments on its draft strategic plan, *The Federal Motor Carrier Safety Administration 2011–2016 Strategic Plan: Raising the Safety Bar,* which has been placed in the docket referenced at the beginning of this notice and is also available on the Agency's Web site at *http://www.fmcsa.dot.gov/rules-regulations*; click on ''Notices.'' The Agency will consider all comments received by close of business on July 29, 2011. Comments will be available for examination in the docket at the location listed under the ''**ADDRESSES**'' section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

FMCSA IdeaScale Community

In addition to the **Federal Register** notice for public comment, FMCSA has set up an IdeaScale Community on its main Web site at *http://www.fmcsa.dot.gov*. IdeaScale is a Department of Transportation initiative providing an interactive, on-line, transparent space for people to engage in conversation about draft proposals and vote if they agree or disagree, which also allows FMCSA to ask clarifying questions to make sure the best comments/ideas are considered.

June 23, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–16274 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee Series of Public Subcommittee Meetings

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of meeting.

SUMMARY: FMCSA announces that the Agency's Motor Carrier Safety Advisory Committee (MCSAC) will hold subcommittee meetings on Monday and Tuesday, July 11 and 12, 2011, and Monday and Tuesday, August 1 and 2, 2011. The meetings will be open to the public for their duration. The subcommittee will discuss how electronic on-board recorder (EOBR) manufacturers could comply with the Agency's communications standards for the transmittal of data files from EOBRs to enforcement officials and related technical issues. This meeting is not a forum for a discussion of broader non-technical EOBR issues. The subcommittee's objective is to prepare a letter report and recommendations on the same for consideration by the full MCSAC, which, in turn, will provide recommendations to the Agency.

TIME AND DATES: Both meetings will be held on Monday and Tuesday, July 11–12, 2011, and Monday and Tuesday, August 1 and 2, 2011, from noon on Monday to 5 p.m., Eastern Time (E.T.), and on Tuesday from 8 a.m. to 5 p.m., E.T. The July 11 and 12, 2011, meeting will be held at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314, in the Washington and Jefferson Rooms on the 2nd floor. The August 1 and 2, 2011, meeting will be held at a location in the Washington, DC, area to be announced via posting on the MCSAC Web site (*mcsac.fmcsa.dot.gov*) in advance of the meeting.

Matters To Be Considered: The subcommittee will consider ideas and concepts that EOBR manufacturers could use to achieve compliance with the Agency's communications standards for the transmittal of data files from EOBRs to enforcement officials. The subcommittee will be comprised of several MCSAC members and certain

subject matter experts invited to provide technical assistance to the full MCSAC on ideas and concepts that EOBR manufactures could use to achieve compliance with the Agency's communications standards for the transmittal of data files from EOBRs to enforcement officials and related technical issues.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Adviser to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish a Motor Carrier Safety Advisory Committee. The committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App 2).*EOBRs*

On April 5, 2010 (75 FR 17208), FMCSA published a final rule that revised the Federal Motor Carrier Safety Regulations to incorporate new performance standards for EOBRs used to capture electronically drivers' duty status or hours of service (HOS). These devices will take the place of automatic on-board recording devices (AOBRDs), the subject of a 1988 rule that established the technical requirements under 49 CFR 395.15.

MCSAC Subcommittee (EOBR Technical Issues)

FMCSA has approved a subcommittee dedicated to EOBR technical issues. Specifically, FMCSA believes it would be helpful to have a MCSAC subcommittee work with subject matter experts to identify ideas and concepts that EOBR manufacturers could use to achieve compliance with communications portion of the April 2010 final rule. In the time since the final rule was published, stakeholders in the CMV safety enforcement and EOBR supplier communities have expressed concern that certain provisions of the technical specifications are not clear and that additional information or guidance may be needed so that manufacturers can deliver fully compliant devices to their motor carrier clients. The chairman of the MCSAC subcommittee is a member of the full MCSAC and has been duly appointed. As authorized by the MCSAC Charter and in order to bring a full range of expertise to the subcommittee, the subcommittee membership consists of both MCSAC members and non-MCSAC members. The subcommittee does not have independent authority and will submit all reports and recommendations to the full MCSAC, which, in turn, will provide recommendations to the Agency.

II. Meeting Participation

The meeting will be open to the public for its duration. Public comments may be heard at 4:30 p.m. on each meeting day.

You may submit written comments identified by Docket ID Number FMCSA–2006–26367 by July 12, 2011, for the July 11 meeting and by August 1, 2011, for the August 1 meeting using 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. E.T, Monday through Friday except Federal holidays.

Fax: 202–493–2251.

Do not submit the same comment by more than one method. To allow effective public participation before the comment period deadline, FMCSA encourages use of the Web site listed above (Federal eRulemaking Portal: *http://www.regulations.gov*).

III. Services for Individuals With Disabilities

For assistance with services for individuals with disabilities or to request special assistance, please send your request to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or e-mail your request to *shannon.watson@dot.gov* by Thursday, June 30 for the July 11 meeting or Thursday, July 28 for the August 1 meeting.

Issued on: June 23, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–16271 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0084]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Department of Transportation, Maritime Administration.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LEI LANI.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0084 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 29, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0084. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version

of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LEI LANI is:

Intended Commercial Use Of Vessel: ''sight seeing charters.''

Geographic Region: ''California.''

Privacy Act

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

By the Order of the Maritime Administrator

Dated: June 23, 2011.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2011–16220 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. Marad 2011–0086]

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 29, 2011.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* (202) 366–4161; or *e-mail: joe.strassburg@dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Seamen's Claims, Administrative Action and Litigation.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0522.

Form Numbers: None .

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The information is submitted by claimants seeking payments for injuries or illnesses they sustained while serving as masters or members of a crew on board a vessel owned or operated by the United States. The filing of a claim is a jurisdictional requirement for MARAD liability for such claims. MARAD reviews the information and makes a determination regarding agency liability and payments.

Need and Use of the Information: This information will be evaluated by MARAD officials to determine if the claim is fair and reasonable. If the claim is allowed and settled, payment is made to the claimant.

Description of Respondents: Officers or members of a crew who suffered death, injury, or illness while employed on vessels owned or operated by the United States. Also included in this description of respondents are surviving dependents, beneficiaries, and/or legal representatives of the officers or crew members.

Annual Responses: 60.

Annual Burden: 750.

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.* 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. E.D.T. (or E.S.T.), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov.*

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.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator,

Dated: June 23, 2011.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2011–16221 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0154]

Terrafugia, Inc.; Grant of Application for Temporary Exemption From Certain Requirements of FMVSS No. 110, Tire Selection and Rims for Motor Vehicles, FMVSS No. 126, Electronic Stability Control Systems, FMVSS No. 205, Glazing Materials, and FMVSS No. 208, Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of grant of petition for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles With a GVWR of 4,536 kilograms (10,000 pounds) or Less,* FMVSS No. 126, *Electronic Stability Control Systems,* FMVSS No. 205, *Glazing Materials,* and FMVSS No. 208, *Occupant Crash Protection.*

SUMMARY: This notice grants the petition of Terrafugia for a temporary exemption from certain FMVSS requirements for tire selection and rims for motor vehicles (FMVSS No. 110), electronic stability control (ESC) systems (FMVSS No. 126), glazing materials (FMVSS No. 205), and advanced air bag requirements (FMVSS No. 208). The basis for the exemption is that compliance with these requirements would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. This action follows our publication in the **Federal Register** of a document announcing receipt of

Terrafugia's petition and soliciting public comments.

DATES: The exemption from FMVSS No. 126 and from the advanced air bag requirements of FMVSS No. 208 is effective from June 1, 2012, through May 31, 2013. The exemption from certain provisions of FMVSS No. 110 and FMVSS No. 205 is effective from June 1, 2012, through May 31, 2015.

FOR FURTHER INFORMATION CONTACT: William H. Shakely, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–318, Washington, DC 20590. *Telephone:* (202) 366–2992; *Fax:* (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Statutory Basis for Requested Part 555 Exemption

The National Traffic and Motor Vehicle Safety Act, as amended, codified as 49 U.S.C. chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for this section to NHTSA.[1]

NHTSA established part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Vehicle manufacturers may apply for temporary exemptions on several bases, one of which is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

A petitioner must provide specified information in submitting a petition for exemption.[2] Foremost among these requirements are that the petitioner must set forth the basis of the application under Section 555.6, and the reasons why the exemption would be in the public interest and, as applicable, consistent with the objectives of 49 U.S.C. chapter 301.

Only small manufacturers can obtain a hardship exemption. A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator.[3] In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from an FMVSS prescribed under Chapter 301 are to be granted on a ''temporary basis,'' the statute also expressly provides for renewal of an exemption on reapplication.[4] Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation and the public interest, among other factors provided in the statute.

II. Terrafugia's Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Terrafugia has petitioned (dated July 20, 2010) the agency for a temporary exemption from certain FMVSS requirements for the Transition,® a Light Sport Aircraft (LSA) that has road-going capability. In addition to its original petition, Terrafugia has submitted additional information regarding its compliance efforts, which has been posted to the public docket.

Terrafugia requested an exemption from certain provisions of the tire selection and rim requirements for motor vehicles (S4.1 and S4.4 of FMVSS No. 110), the ESC system requirements (FMVSS No. 126), the glazing materials requirements (S5 of FMVSS No. 205), and the advanced air bag requirements (S14 of FMVSS No. 208). The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. Terrafugia has requested a three-year hardship exemption. A copy of the petition is available for review and has been placed in the docket of this notice.[5] In a subsequent submission, Terrafugia clarified its plans with respect to S14 of FMVSS No. 208, stating that it will certify its vehicles to comply with the belted 50th percentile male barrier impact test (S14.5.1(a)). Terrafugia has also since stated that it plans to certify to the unbelted 50th percentile male barrier impact test in force prior to September 1, 2006 (S5.1.2(a)).

According to the petition, Terrafugia is a small, privately held company that was incorporated in the state of Delaware in 2006 and maintains headquarters in Woburn, Massachusetts. Terrafugia states that the company employs ten full-time employees. The company identified itself as a Massachusetts Institute of Technology (MIT) spin-off company, but stated that it does not have access to MIT's financial resources. The company also stated that it is not affiliated with any other aircraft or automobile manufacturer.

Terrafugia has designed and built the first prototype of the Transition,® which it described as a ''Roadable Aircraft.'' Terrafugia characterized the Transition® as an LSA, as defined by the Federal Aviation Administration (FAA), and stated that the vehicle's road-going capability will provide a significant increase in operational functionality and safety for the General Aviation[6] pilot community by allowing pilots to safely continue their travel plans in the event of inclement weather.

To date, Terrafugia has not produced any vehicles for sale, but intends to begin delivery of the Transition® in late-2012[7] and anticipates producing 200 vehicles during the three-year requested exemption period. Terrafugia stated that it expects to remain a low-volume manufacturer for the foreseeable future, continuing to market the Transition® as an aircraft with road-going capability, not as a ''flying car.'' Thus, the primary market for the Transition® will be U.S. pilots.

Terrafugia's basis for the petition is that requiring compliance with the stated provisions would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith (49 U.S.C. 30113(b)(3)(B)(i)).

A. Terrafugia's General Statement of Economic Hardship

Terrafugia stated that the denial of the requested exemption will result in substantial economic hardship. The company indicated that it has spent

[1] 49 CFR 1.50.

[2] 49 CFR 555.5.

[3] 49 U.S.C. 30113(d).

[4] 49 U.S.C. 30113(b)(1).

[5] To view the petition, go to *http://www.regulations.gov* and enter the docket number set forth in the heading of this document. The company requested confidential treatment under 49 CFR part 512 for certain business and financial information submitted as part of its petition for temporary exemption. Accordingly, the information placed in the docket does not contain such information that the agency has determined to be confidential.

[6] Terrafugia explained that General Aviation is the segment of the air transportation industry characterized by flight outside of the commercial airline system and military operations.

[7] Terrafugia initially stated that it planned to begin production in late-2011 but subsequently indicated that its production plans had been delayed.

approximately $3.5 million since 2006 on the development of the Transition® and has had no appreciable revenue during that time. Terrafugia acknowledged that it has received over 80 orders for vehicles but that, due to escrow agreements for each deposit, these funds are not accessible operating funds.

The Transition's® dual purpose as an aircraft and ground vehicle has necessitated the application of both FAA regulations for LSA and the FMVSSs established by NHTSA for new motor vehicles and motor vehicle equipment. Terrafugia contended that ''it is not always possible to completely merge the two regulations without compromising safety, incurring prohibitive costs, and/or reducing core functionality.'' [8] Specifically, Terrafugia stated that in order to maintain compliance with the FAA's maximum weight requirement for LSAs,[9] weight must be removed from the vehicle to offset any extra weight that is added for motor vehicle safety equipment. Terrafugia calculated that for each additional pound removed, it costs $14,500 [10] in development costs and adds $4,200 [11] to the cost of the aircraft.[12]

Terrafugia stated that a grant of the requested exemption would allow the company to continue with LSA certification for the Transition® while pursuing lightweight compliance solutions and researching additional ways of reducing the weight of non-safety-critical systems for the aircraft.

Terrafugia noted that the Transition® is currently its only product line. Accordingly, a denial would force the company to delay all production until compliance is achieved. The company stated that a denial would delay customer delivery and initial revenue generation by at least two years and that this delay, coupled with the sharply decreased probability of the company reaching profitability, would make additional investment capital extremely difficult to secure. Terrafugia calculated that the revenue difference between a grant and a denial of the exemption would be $19.4 million and would double the price point of the Transition®. Accordingly, Terrafugia opined that a denial would likely force the company to abandon LSA certification and the development of the Transition®.[13]

B. Terrafugia's Statement of the Costs of Compliance and Good Faith Efforts To Comply

Terrafugia provided a detailed description of its efforts to comply and the compliance costs it faces. The company stated that although it might have been easier to design the Transition® as a three-wheel vehicle and certify it as a motorcycle, due to the light weight of the vehicle and the exposed side area of the folded wings, a more stable four-wheel configuration was chosen.

Below is a summary of the compliance efforts and costs for each of the requirements from which Terrafugia seeks exemption.

1. FMVSS No. 110, Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles With a GVWR of 4,536 Kilograms (10,000 Pounds) or Less, Paragraphs S4.1, S4.4[14]

Terrafugia seeks an exemption from the general tire requirements (S4.1) and rim requirements (S4.4) of FMVSS No. 110. Terrafugia stated that compliance with these requirements would cause substantial economic hardship due to the cost of reducing the weight of the vehicle in order to offset the weight of the tires and rims required by the standard, which have significantly higher speed and load ratings than that needed for the Transition®. As part of its efforts to comply with the standard, Terrafugia evaluated several passenger car tire and rim combinations. The company also investigated the development of a lighter custom rim and tire combination that would meet the requirements of FMVSS No. 110.

Based on conversations with Continental Tire, Terrafugia estimated that development and certification costs for custom tires would be approximately $120,000 and that it would have to place a minimum order of 3,000 units at an expense $450,000, for a total cost of $570,000. Terrafugia also stated that it had experienced difficulty in finding a major tire manufacturer to work on the project. The company indicated that an exemption would provide time to gather data on tire usage to justify a larger custom tire purchase, would allow the company to build relationships with tire manufacturers to facilitate custom tire development, and would provide revenue to offset the cost of the custom tire program.

If granted an exemption, Terrafugia intends to use tires and rims with proper load and speed ratings, which are certified for motorcycle use (*See* 49 CFR 571.119). The company stated that it had already performed takeoff and landing testing using the lighter motorcycle tires and rims, and the company asserted that they would provide an equivalent level of safety as compared to tires certified for traditional passenger vehicles, while allowing for weight savings of 25 pounds (11.3 kg). The company stated that it intended to perform handling and brake testing using the motorcycle tires and rims.

Terrafugia stated that, to date, it has spent $50,290 towards finding a compliant rim and tire combination that would meet the speed, loading, and weight requirements for the Transition®.

2. FMVSS No. 126, Electronic Stability Control Systems[15]

Terrafugia seeks an exemption from the ESC system requirements of FMVSS No. 126. ESC systems employ automatic computer-controlled braking of individual wheels to assist the driver in maintaining control in critical driving situations.[16] NHTSA's crash data study shows that ESC systems reduce fatal single-vehicle crashes of passenger cars by 36 percent and fatal single-vehicle crashes of LTVs (light trucks and vans, including pickup trucks, SUVs, minivans, and full-size vans) by 63 percent.[17] The agency further estimates that ESC has the potential to prevent 70 percent of the fatal passenger car rollovers and 88 percent of the fatal LTV rollovers that would otherwise occur in single-vehicle crashes.[18]

Terrafugia stated that it faces two challenges with an off-the-shelf ESC unit. First, an ESC system would add 6

[8] Terrafugia Petition, p. 3.

[9] Terrafugia obtained a partial grant of exemption from the FAA (FAA Docket No. FAA–2009–1087), allowing the Transition® to have a maximum takeoff weight (MTOW) of 1,430 pounds (650 kg) instead of the general MTOW requirement of 1,320 pounds (600 kg).

[10] Terrafugia explained that this is based on the experience of removing weight between the Proof of Concept vehicle to the prototype and the fact that as more and more weight must be removed, it becomes increasingly more difficult to do so.

[11] Terrafugia explained that this figure is based on identified cost vs. weight trade-offs, such as material replacement, and a minimal margin.

[12] Terrafugia noted that there is a physical limitation as to how much weight can be removed from the vehicle, at any cost, before it is no longer capable of safely performing its function. The dollar values provided by Terrafugia are applicable until that limit is reached, past which very little can be done at any price and the product is no longer viable.

[13] Terrafugia stated that not being able to certify the Transition® as an LSA would increase certification costs by up to $100 million and would force the company to dissolve.

[14] 49 CFR 571.110.

[15] 49 CFR 571.126.

[16] 73 FR 54526, 54527 (September 22, 2008).

[17] Dang, J., Statistical Analysis of the Effectiveness of Electronic Stability Control (ESC) Systems—Final Report, DOT HS 810 794, U.S. Department of Transportation, Washington, DC (July 2007). Available at Docket No. NHTSA–2007–28629, item 2.

[18] *Id.*

pounds of weight to the Transition®. Removing this amount of weight from elsewhere in the vehicle would involve development costs of $87,000 and would raise the price of the vehicle by $25,200. These costs would be in addition to the purchase and integration costs for the system, which were not available at the time the petition was filed. Second, Terrafugia contended that an ESC system would pose a flight safety risk because, by design, an ESC system may automatically cut the engine power when activated in a vehicle, which would create a single point failure that could shut down the Transition's® engine in flight. Terrafugia indicated its belief that this additional safety risk outweighs the safety benefit of the ESC system on the ground.

Terrafugia stated that it had approached Bosch Engineering Group about developing an ESC system for the Transition,® but those discussions were terminated by Bosch due to liability concerns about installing the system on an airplane. Terrafugia indicated that it was in the process of evaluating other vendors. The company stated that it had also investigated the feasibility of developing an ESC system in-house but had determined that such a program beyond its current capabilities. Terrafugia indicated that an exemption would allow it to further investigate the issues associated with an ESC system, which might result in a petition for rulemaking to reflect the aviation safety concerns of such a system.

3. FMVSS No. 205, Glazing Materials, Paragraph S5[19]

Terrafugia seeks an exemption from the glazing material requirements (S5 of FMVSS No. 205), which affect the Transition's® windshield and side windows. Terrafugia stated that installing compliant glazing materials, such as traditional laminated safety glass, would result in 29 pounds (13.2 kg) of additional weight. Terrafugia equipped its Proof of Concept vehicle with custom-made FMVSS-compliant safety glass, but this vehicle was not light enough to comply with the LSA weight restrictions, and Terrafugia was unable to remove sufficient weight from the aircraft to accommodate compliant glazing materials. Terrafugia calculated that the removal of 29 pounds from the Transition® would cost $420,500 in development costs, would increase the price of each vehicle by a minimum of $121,800, and would delay production of the vehicles.

The company also determined that, in the event of a bird strike, FMVSS-compliant safety glass would either shatter or craze to a degree that would substantially inhibit the pilot's view. Accordingly, Terrafugia investigated the possibility of using an FMVSS-compliant polycarbonate windshield. According to the petition, the polycarbonate material passed intrusion tests without cracking, but Terrafugia was still pursuing options for a scratch-resistant coating that could meet the abrasion tests. The company stated that one vendor informed them that its coating would likely pass the abrasion tests but that such tests had not yet been performed. Terrafugia indicated that it is engaged in discussions with several vendors and is planning future compliance testing of coated polycarbonate materials. In the meantime, Terrafugia stated that the Transition® would be equipped with polycarbonate glazing, and each vehicle would be required to undergo regular, frequent inspections, at which time windshields with degraded visibility would be identified and replaced.

4. FMVSS No. 208, Occupant Crash Protection, Paragraph S14 (Advanced Air Bags)[20]

Terrafugia seeks an exemption from the advanced air bag requirements of FMVSS No. 208 (S14) because the company currently does not have the financial resources to design and install an advanced air bag system, which it calculated would cost approximately $2.4 million and result in production delays of at least 18 months.

In the meantime, the company intends to install basic air bags in the Transition®, as well as a carbon fiber omega beam ''safety cage'' surrounding the passenger compartment, energy-absorbing crush structures, seat belts, and other necessary passenger safety equipment not traditionally installed in an LSA. In its supplementary submissions, Terrafugia indicated that it was working with Multimatic and Tass to develop its occupant protection system and that it will certify compliance with the belted 50th percentile male barrier impact test (S14.5.1(a)). Terrafugia has also stated that it plans to certify to the unbelted 50th percentile male barrier impact test in force prior to September 1, 2006 (S5.1.2(a)).

To date, Terrafugia has spent approximately $161,000 in its efforts to comply with FMVSS No. 208. Terrafugia anticipated using the sales revenue generated during the exemption period to pursue the development of an advanced air bag system, ideally one that would be able to differentiate between the needs of an automotive crash and an aviation crash.

5. Future Compliance Efforts

Terrafugia included a schedule of its future compliance efforts during the proposed exemption period and stated that it was working toward full compliance by the end of that period. However, Terrafugia noted that the success of its plan was dependent on the availability of sufficient investment capital and the willingness of third parties to work with it. The company reiterated that it was also considering petitioning NHTSA and FAA for rulemakings to address the unique dual-purpose nature of the Transition®.

C. Terrafugia's Statement of Public Interest

Terrafugia asserted that the requested exemption is in the public interest because the Transition® will increase the safety of flight for General Aviation in the United States, contribute to the advancement of technology for light aircraft and light-weight, fuel efficient automobiles, and improve the environment and economy.

According to Terrafugia's petition, one of the most significant causes of General Aviation accidents and fatalities is weather, and a leading cause of weather-related accidents is when pilots using visual references, rather than flight instruments, for primary orientation and navigation (Visual Flight Rules or VFR) fly into weather conditions with insufficient visibility to provide a safe visual reference (instrument meteorological conditions or IMC). In such situations, pilots can get disoriented and enter an unrecoverable situation that results in an often fatal accident. According to Terrafugia, the Transition® offers a new alternative to pilots by allowing them to divert to the nearest airport and continue the trip on the ground. Although the trip may take longer, Terrafugia stated that the Transition® is expected to eliminate the possibility of an indeterminately long delay caused by either retracing the flight route to clearer weather or diverting and waiting for the weather to pass. Accordingly, Terrafugia expects that the Transition® will help reduce these types of crashes, while also making General Aviation more appealing and accessible to a greater number of people. Additionally, because the Transition® is equipped with basic FMVSS occupant crash protection features, Terrafugia argued that it is advancing passenger safety technology in light aircraft.

[19] 49 CFR 571.205.

[20] 49 CFR 571.208.

The Transition® uses an FAA-certified, four cylinder, 100 horsepower, unleaded gasoline-fueled aircraft engine to power the vehicle both in the air and on the ground. Terrafugia contended that the use of unleaded gasoline will provide ''significant ecological and energy benefits,'' as compared to the leaded gasoline used in other General Aviation aircraft. Terrafugia also opined that one day a future version of the Transition® might play a role in reducing highway congestion and CO_2 emissions by enabling more people to shift from highway-based travel to a combination of flight and road use for mid-range trips. Terrafugia stated that the Transition® will cruise in the air at approximately 105 miles per hour and maintain highway speeds on the ground, while attaining between 25 and 40 miles per gallon in flight and on the road.

Terrafugia anticipated that the Transition® will only be operated on public roadways in conjunction with a flight. The company stated that it expects that the typical recreational owner will operate the vehicle as an aircraft for at least 65 percent of its engine-on-time and will drive the vehicle on the road less than 2,000 miles annually. Terrafugia contended that the combination of low sales volume and limited use on roadways limits the Transition's® overall impact on motor vehicle safety.

Terrafugia estimated that by 2015, the production of the Transition® will provide 500 manufacturing, engineering, and support jobs to the U.S. economy.

III. Notice of Receipt and Summary of Comments

On November 16, 2010 we published a notice of receipt of Terrafugia's petition for temporary exemption in the **Federal Register** (75 FR 70071), and provided an opportunity for public comment. We received ten comments in response to the notice, as well as a response from Terrafugia.

Five commenters submitted six comments supporting the grant of the exemption requested by Terrafugia. These commenters included Women in Aviation International (WAI), a nonprofit organization dedicated to the encouragement and advancement of women in aviation career fields and interests, the Experimental Aircraft Association (EAA), a group of aviation enthusiasts, pilots, and aircraft owners, the Aircraft Owners and Pilots Association (AOPA), a not-for-profit membership organization consisting of more than 400,000 pilots, Sherry Grobstein, a private pilot with over 35 years of experience who has placed a deposit on a Transition®, and Kenneth J. Ramsey. Four comments raised questions regarding Terrafugia's petition. One of these comments was submitted by John Dritten, a pilot, and the other three were anonymous comments.

All of the supporting comments described the dangers associated with VFR flights entering IMC and emphasized the Transition's® ability to reduce these types of crashes by encouraging pilots to land when they encounter bad weather. WAI, EAA, and Mr. Ramsey also discussed the safety features equipped on the Transition®. WAI stated that the Transition® offers a significantly higher level of crash safety than that found in light aircraft, EAA indicated that the Transition's® safety features had the potential to reduce crash-landing fatalities, and Mr. Ramsey opined that the Transition's® safety features would provide an adequate safety margin under most circumstances.

Mr. Dritten, however, questioned Terrafugia's petition, noting that it appeared that most of the exemptions sought would be unnecessary if the Transition® was equipped with only three wheels and certified as a motorcycle. Mr. Dritten further stated that removing one wheel would eliminate approximately 100 pounds of weight from the vehicle.

Mr. Dritten also questioned Terrafugia's efforts to comply and whether the exemption sought was in the public interest. Mr. Dritten noted that development of the Transition® began in 2006 and questioned why Terrafugia had not requested an exemption earlier.

One of the anonymous commenters responded to the question we raised in the notice of receipt concerning whether the safety benefits of reducing weather-related accidents for flights of the Transition® outweigh the safety risks associated with road use of the Transition® in inclement weather. The commenter noted that an LSA piloted by a sport pilot can only be flown in daytime VFR conditions, which requires three miles of visibility. The commenter indicated that, accordingly, a pilot should not even see inclement weather if the pilot is flying legally. The commenter stated that in the face of inclement weather, VFR pilots in normal aircraft would not fly, fly around the weather, or land the aircraft and wait until the bad weather passes, and that any of these options would be safer than flying or driving the Transition® in inclement weather. The commenter indicated that without electronic stability control, non-DOT car tires and rims, no laminated safety glass, and no advanced air bags, driving the Transition® would be less safe than flying the Transition® legally (in good weather). The commenter stated that comparing driving the Transition® in inclement weather to flying the Transition® in inclement weather (*i.e.,* illegally) was not as valuable as determining whether and to what extent granting the exemption would increase the risk of accident and injury to the occupants of the Transition® as compared to a motor vehicle that meets all FMVSSs.

The commenters offered the following comments on each of the specific exemptions sought by Terrafugia:

FMVSS No. 110, S4.1 and S4.4—Ms. Grobstein stated that the tires on the Transition® must allow cross wind landings as well as safe operation on the road and should be appropriate for the light weight of the vehicle. Accordingly, she opined that heavier tires would provide no benefit and take up weight that could be used for a passenger or baggage. EAA commented that it was the group's understanding that the type of tires used on the Transition® are permitted on vehicles of comparable wheel load. EAA also noted that Terrafugia's Proof of Concept vehicle successfully tested using these tires and opined that compliance appeared to involve a regulatory technicality rather than a safety matter. Mr. Ramsey opined that the tires proposed by Terrafugia would be suitable and provide an appropriate safety margin during takeoff and landing as well as while driving.

FMVSS No. 126—Ms. Grobstein and Mr. Ramsey stated that the Transition® has a low center of gravity and would be unlikely to roll over, and that, accordingly, an ESC system is unnecessary. EAA noted it was not unusual for suppliers to refuse to work with aircraft companies due to low production volumes and product liability concerns. EAA opined that given the physical characteristics of the Transition®, including its relatively long wheel base, wide track, low center of gravity, and low mass, it appeared that the Transition® was significantly different than vehicles displaying rollover tendencies, which drove the adoption of the ESC requirement. Accordingly, given the economic hardship Terrafugia would encounter in terms of complying with the FAA weight requirement and developing its own ESC system, EAA stated that an exemption would be in the public interest.

An anonymous commenter indicated that NHTSA's own statistics showed

that ESC systems have the ability to prevent crashes other than rollovers, which are independent of the vehicle's center of gravity.[21] The commenter also indicated that he had purchased off-the-shelf ESC systems and never had to disclose the intended use of the systems. The commenter opined that the ESC requirements should not be ignored because of engineering and development expense.

FMVSS No. 205, S5—Ms. Grobstein, EAA, and Mr. Ramsey all stated that due to the danger of bird-strikes while in flight, a polycarbonate windshield was safer for the Transition® than one that was compliant with FMVSS No. 205. Ms. Grobstein also noted that an FMVSS-compliant windshield would be heavier, and Mr. Ramsey indicated that a polycarbonate windshield would provide adequate protection while the Transition® was being driven. Additionally, EAA stated that the Transition® would be subject to annual airworthiness condition inspections, and any windshield scratches that could obscure the operator's vision would be discovered and remedied during such inspections.

An anonymous commenter stated that a polycarbonate windshield would quickly scratch and haze when exposed to road conditions, especially with the use of windshield wipers in rainy weather. The commenter also stated that, in the event of a crash, emergency personnel would have a difficult time removing a polycarbonate windshield.

FMVSS No. 208, S14—WAI stated that pilots are more accustomed to following seat belt and other usage guidelines than the average driver, making the installation of advanced air bags less critical. Ms. Grobstein stated that the Transition® was not an appropriate vehicle to ride long distances with a child and that her companion would not be one that required a car seat. Accordingly, she opined that advanced air bags would provide no extra safety and would only add expense and weight to the vehicle. EAA stated that due to the difficulty of finding a supplier for an advanced air bag system that would be compatible with both road travel and flight, the development of such a system would represent a significant financial burden to Terrafugia. Mr. Ramsey stated that given the Transition's® design, it was unlikely that an unbelted out-of-position child would be in the vehicle, and, accordingly, an advanced air bag system was not warranted.

On the other hand, Mr. Dritten questioned the safety of driving the Transition®. He indicated that children would undoubtedly ride in the vehicle, noting that he flew with his own children and would continue to do so if he owned the Transition®. One anonymous commenter agreed that children would likely be riding in the vehicle, noting that EAA is a proponent of giving children the opportunity to fly with its Young Eagles program and that many of the flights in this program involve LSA.

Terrafugia submitted a response to the public comments described above. Regarding the decision to create a four-wheel, rather than three-wheel, vehicle, the company reiterated that it recognized that significant additional effort would be required to meet the applicable safety standards but indicated that it made the decision to develop a four-wheel vehicle based on its determination that a such a vehicle would be safer and more stable.

Terrafugia also discussed the probability of children riding in the Transition®. The company acknowledged that children may occasionally be driven or flown in the Transition®, but that it was not expected to be a common occurrence. The company noted that most of the customers who could afford the Transition® are beyond the age at which they would have young children and, as trained pilots, would understand the associated risks. Terrafugia further stated that the benefit garnered by occasionally giving children the opportunity to ride in the Transition® offsets the occasional, well-considered risk.

IV. Agency Analysis and Decision

In this section, we provide our analysis and decision regarding Terrafugia's temporary exemption request from the requirements of various FMVSSs.

As discussed below, we are granting Terrafugia's petition for the Transition® to be exempted from S4.1 and S4.4 of FMVSS No. 110, FMVSS No. 126, S5 of FMVSS No. 205, and S14 (apart from S14.5.1.(a)) of FMVSS No. 208 beginning on June 1, 2012. The Transition® is exempted from FMVSS No. 126 and S14 (apart from S14.5.1.(a)) of FMVSS No. 208 for a period of one year and is exempted from S4.1 and S4.4 of FMVSS No. 110 and S5 of FMVSS No. 205 for a period of three years. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(a) of FMVSS No. 208, Terrafugia must certify to the unbelted 50th percentile adult male dummy barrier impact test requirement that applied prior to September 1, 2006 (S5.1.2(a) of FMVSS No. 208). For purposes of this exemption, the unbelted sled test in S13 of FMVSS No. 208 is an acceptable option for that requirement. The agency's rationale for this decision is as follows:

A. Eligibility

As discussed above, a manufacturer is eligible to apply for an economic hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113). Terrafugia indicated that at the time of the application, it had not produced any vehicles for sale and stated that it predicted producing 200 vehicles during the exemption period if an exemption is granted. Furthermore, the company stated that it is not affiliated with any other aircraft or automobile manufacturer. Accordingly, we have determined that Terrafugia is eligible to apply for an economic hardship exemption.

B. Economic Hardship

Terrafugia stated that it has spent approximately $3.5 million since 2006 on the development of the Transition® and has had no appreciable revenue during that time. Terrafugia acknowledged that it has received over 80 orders for vehicles but that due to escrow agreements for each deposit, these funds are not accessible operating funds. Terrafugia's confidential records support its assertion that it has experienced a continuing and cumulative net loss position. Additionally, one commenter agreed with Terrafugia that the cost of complying with the advanced air bag requirements and the ESC system requirements would represent a significant financial burden to Terrafugia.

The touchstone that NHTSA uses in determining the existence of substantial economic hardship is an applicant's financial health, as indicated by its income statements. NHTSA has tended to consider a continuing and a cumulative net loss position as strong

[21] The commenter did not cite a source for the statistics listed. As stated above, NHTSA's crash studies have shown that ESC systems reduce fatal single-vehicle crashes of passenger cars by 36 percent, and fatal single-vehicle crashes of LTVs by 63 percent. The studies further estimated that ESC systems would prevent 70 percent of passenger car rollovers and 88 percent of LTV rollovers in single vehicle crashes.

evidence of hardship.[22] The theory behind NHTSA's rationale is that, if a company with a continuing net loss is required to divert its limited resources to resolve a compliance problem on an immediate basis, it may be unable to use those resources to solve other problems that may affect its viability. The agency has considered this especially important in its treatment of corporate petitioners during their infancy.

Additionally, Terrafugia stated that the Transition® is currently its only product line. Accordingly, a denial would force the company to delay all production until compliance is achieved. Terrafugia stated that a denial would delay customer delivery and initial revenue generation by at least two years and that this delay, coupled with the sharply decreased probability of the company reaching profitability, would make additional investment capital extremely difficult to secure. Terrafugia calculated that the difference between a grant and a denial of its petition was $19.4 million in revenue and indicated that a denial would likely put the company out of business.

Based on these factors, we conclude that Terrafugia has demonstrated the requisite economic hardship.

C. Good Faith Efforts To Comply

Terrafugia described in detail its efforts to comply with the listed FMVSSs as well as its plans for compliance by the end of the proposed exemption period. In particular, Terrafugia provided a plan to achieve full compliance with FMVSS Nos. 110, 205, and 208 within the three-year period. Although Terrafugia budgeted for FMVSS No. 126 compliance research and indicated that it was working towards compliance with all FMVSSs by the end of the requested exemption period, the company also stated that it was currently evaluating vendors to work with to develop an ESC system and indicated that further research might lead the company to petition for rulemaking on this issue. Accordingly, it appears that Terrafugia does not know at this time whether the Transition® will be able to comply with FMVSS No. 126 by the end of the requested exemption period.

One of the public comments questioned Terrafugia's general efforts to comply. Specifically, the commenter noted that Terrafugia could have designed the Transition® with three wheels instead of four, thus saving weight, allowing for the installation of additional safety features, and avoiding the need to comply with the safety standards required for four-wheel vehicles. The commenter also questioned why Terrafugia did not request an exemption earlier in the development process.

Regarding the decision to design a four-wheel, rather than three-wheel, vehicle, Terrafugia stated in its petition and its response to the public comments that it was aware that using a three-wheel design would lessen its regulatory burden. However, due to the light weight of the vehicle and the exposed side area of the folded wings, the company chose a four-wheel design to increase stability and make the vehicle safer. Given Terrafugia's rationale for its decision to use a four-wheel design, the agency does not believe that this decision reflects negatively on Terrafugia's efforts to comply with the FMVSSs.

Likewise, the agency does not consider the timing of Terrafugia's petition for exemption to reflect negatively on the company's efforts to comply. Terrafugia's petition is dated July 20, 2010. In the petition, Terrafugia requested an exemption beginning with the first Transition® delivery on or near December 1, 2011, over 16 months later. The agency considers this to be a sufficient period to carefully consider the merits of Terrafugia's petition and make a reasoned decision.

After reviewing Terrafugia's petition and the public comments, we believe that the company has made good faith efforts to comply with the standards from which it is seeking exemption. Terrafugia is a new company, and the Transition® is a unique, dual-purpose vehicle designed for both flying and driving. Many of the impediments to compliance that Terrafugia has encountered are a direct result of the dual nature of the Transition®, including the need to meet the strict weight requirements of an LSA. Despite these impediments, Terrafugia has devoted significant resources towards compliance, has attempted to mitigate the risks associated with noncompliance, and has developed a plan for full compliance with three of the four listed FMVSSs by the end of the requested three-year period.

In sum, we believe that, considering Terrafugia's overall situation, the efforts that the company has made to date, and the plans it has in place, Terrafugia has made good faith efforts to comply with the requirements from which it seeks a temporary exemption.

D. Public Interest Considerations

NHTSA has traditionally found that the public interest is served by affording consumers a wider variety of motor vehicles and providing additional employment opportunities. We believe that both of these public interest considerations would be served by granting Terrafugia's petition. The Transition® is a unique vehicle that uses a variety of new technologies. An exemption would allow for the evaluation of the market for this type of vehicle as well as the further development of these new technologies. Additionally, Terrafugia estimated that by 2015, the production of the Transition® will provide 500 manufacturing, engineering, and support jobs to the U.S. economy.

Furthermore, by reducing the disincentive associated with landing an aircraft prior to reaching the pilot's planned destination, the Transition® has the potential to reduce aircraft crashes involving a pilot using VFR flying into inclement weather. One commenter noted that VFR pilots are not supposed to fly into inclement weather and asserted that comparing flying and driving in inclement weather was not as useful as focusing on the increased risk to occupants of the Transition® when it is operated on the road. We note that Terrafugia cited a report describing the occurrence of these VFR-into-IMC crashes, and the company stated that one of the purposes of the Transition® is to attempt to reduce their occurrence. Additionally, five of the comments discussed the danger of such types of crashes and supported Terrafugia's assertion that the Transition® has the potential to reduce their occurrence. Accordingly, we believe that the Transition's® stated purpose supports Terrafugia's assertion that the requested exemption is consistent with the public interest.

We have also considered motor vehicle safety issues related to the exemption requested by Terrafugia. We believe that, in general, the requested exemption will have a limited impact on motor vehicle safety because of the low number of vehicles expected to be produced and because each vehicle is likely to travel on public roads only infrequently. Terrafugia predicted producing 200 vehicles during the exemption period and estimated that, on average, each vehicle would spend less than 2,000 miles on the road annually.

However, as explained in detail below, after considering the individual requirements from which exemption is sought, the public comments, and the agency's policy on granting exemptions, we have determined that the three-year exemption requested for the ESC system requirements and the advanced air bag requirements is not warranted. Instead,

[22] Grant of petition of Bugatti Automobili, S.p.A., 59 FR 11649, 11650 (Mar. 11, 1994).

we are granting a one-year exemption from these requirements.

Terrafugia indicated that the tires and rims it plans on using have appropriate load and speed ratings for the Transition® and stated that it had already flight-tested this equipment. Most of the public comments supported exempting Terrafugia from the tire and rim requirements of FMVSS No. 110. One commenter expressed concern about the safety of driving the Transition® without the FMVSS-required safety equipment, including tires and rims, but did not specifically comment on any consequences of Terrafugia's proposed use of motorcycle tires and rims.

After considering these factors, we believe that the requested three-year exemption from S4.1 and S4.4 of FMVSS No. 110 is consistent with the public interest.

Regarding the ESC system requirements of FMVSS No. 126, several commenters asserted that the design of the Transition® was significantly different than vehicles displaying rollover tendencies, which drove the adoption of the ESC requirement, and, therefore, meeting the ESC system requirements would have a minor safety impact. However, one commenter asserted that, in light of NHTSA's own statistics indicating the ability of ESC systems to prevent crashes other than rollovers, the ESC requirements should not be ignored because of the associated engineering and development expense.

The agency's research has shown that ESC systems have the ability to prevent 36 percent of fatal single-vehicle crashes of passenger cars and 63 percent of fatal single-vehicle crashes of LTVs. These statistics include crashes that do not involve vehicle rollovers. Accordingly, we believe that, in spite of the Transition's® design, an ESC system will improve the safety of the vehicle.

Additionally, Terrafugia expressed concern that an ESC system would create a potential hazard while the Transition® is in flight. However, the agency notes that FMVSS No. 126 explicitly allows vehicles to be equipped with an ''ESC Off'' control that puts the ESC system into a mode in which it will no longer meet the performance requirements described in the standard. Terrafugia did not discuss this provision or explain why such a control would not be feasible for the Transition®.

Weighing these factors, the agency does not believe that a three-year exemption from FMVSS No. 126 is warranted. Instead, we are granting Terrafugia a one-year exemption. Although this period is shorter than that requested by the company, the exemption will allow Terrafugia to begin production and continue to work towards compliance.

Regarding the glazing requirements of FMVSS No. 205, Terrafugia stated that using automobile safety glass would cause a potential hazard in the event of an in-flight bird strike. Several commenters supported this assertion. However, one commenter expressed concern that the polycarbonate windshield and windows equipped in the Transition® would scratch and haze easily when exposed to road conditions and the use of windshield wipers. The commenter also stated that emergency personnel would have a difficult time removing the polycarbonate windshield. We acknowledge that a polycarbonate windshield may be subject to more scratching and hazing than an FMVSS-compliant windshield. However, we believe that these concerns are mitigated by the Transition's® limited expected road use and by Terrafugia's assertions that each Transition® would be required to undergo regular, frequent inspections, at which time windshields with degraded visibility would be identified and replaced. Additionally, we do not believe that a polycarbonate windshield would meaningfully hamper rescue efforts by emergency personnel. Accordingly, we believe that the requested three-year exemption from S5 of FMVSS No. 205 is consistent with the public interest.

Finally, regarding the exemption from the advanced air bag requirements of FMVSS No. 208, there was disagreement among the commenters as to whether children would likely be riding in the Transition®, with some commenters indicating they do not fly with children in their aircraft and others indicating that they do. One commenter noted that at least one organization encourages children to fly and has set up a program to provide such opportunities. Terrafugia acknowledged that children might ride in the Transition® but indicated that, in light of the average age of the customers purchasing the vehicle, it was not expected to be a common occurrence.

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' [23] The upgrade was designed to meet the twin goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The issuance of the advanced air bag requirements was a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats.

The new requirements were phased-in, beginning with the 2004 model year. Small volume manufacturers were not subject to the advanced air bag requirements until the end of the phase-in period, *i.e.,* September 1, 2006.

In recent years, NHTSA has addressed a number of petitions for exemption from the advanced air bag requirements of FMVSS No. 208. The majority of these requests have come from small manufacturers, each of which has petitioned on the basis that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard. In recognition of the more limited resources and capabilities of small motor vehicle manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts was added to the Vehicle Safety Act in 1972 to enable the agency to give those manufacturers additional time to comply with the Federal safety standards.

NHTSA has granted a number of these petitions, usually in situations in which the manufacturer is supplying standard air bags in lieu of advanced air bags.[24] In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

Notwithstanding those previous grants of exemption, NHTSA is considering two key issues—

(1) Whether it is in the public interest to continue to grant such petitions, particularly in the same manner as in the past, given the number of years these requirements have now been in effect and the benefits of advanced air bags, and (2) to the extent such petitions are granted, what plans and countermeasures to protect child and infant occupants, short of compliance with the advanced air bag requirements, should be expected.

While the exemption authority was created to address the problems of small manufacturers and the agency wishes to be appropriately attentive to those problems, it was not anticipated by the

[23] *See* 65 FR 30680 (May 12, 2000).

[24] *See, e.g.,* grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

agency that use of this authority would result in small manufacturers being given much more than relatively short term exemptions from recently implemented safety standards, especially those addressing particularly significant safety problems.

Given the passage of time since the advanced air bag requirements were established and implemented, and in light of the benefits of advanced air bags, NHTSA is considering whether it is in the public interest to continue to grant exemptions from these requirements, particularly under the same terms as in the past. The costs of compliance with the advanced air bag requirements of FMVSS No. 208 are costs that all entrants to the U.S. automobile marketplace should expect to bear. Furthermore, NHTSA understands that, in contrast to the initial years after the advanced air bag requirements went into effect, low volume manufacturers now have access to advanced air bag technology. Accordingly, NHTSA tentatively concludes that the expense of advanced air bag technology may not now be sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.

As part of the review of the agency's policy regarding exemptions from the advanced air bag requirements, we have published several notices of receipt that include requests for public comment on these issues.

The agency acknowledges that Terrafugia faces impediments beyond the expense of advanced air bag technology and believes that it is consistent with the public interest to grant the requested exemption. However, in light of NHTSA's reexamination of the agency's policy regarding exemptions from the advanced air bag requirements, we do not believe that the three-year exemption requested is warranted. Instead, we are granting Terrafugia a one-year exemption from the advanced air bag requirements. Although this period is shorter than that requested by Terrafugia, this exemption will allow Terrafugia to begin production and continue its efforts toward full compliance.

As a condition of this exemption, the Transition® must have the permanently affixed ''sun visor air bag warning label'' and the removable ''warning label on the dashboard'' that NHTSA developed/requires for vehicles without advanced air bags.

The agency acknowledges that Terrafugia's petition indicated that a three-year exemption was required to comply with the FMVSSs and that the company may not be able to achieve full compliance with the requirements of FMVSS No. 126 and the advanced air bag requirements of FMVSS No. 208 within the one-year exemption period granted by this notice. However, as stated above, this exemption will allow Terrafugia to begin production and continue its efforts toward full compliance with these standards. Additionally, we note that Part 555 allows a manufacturer to apply for renewal of a temporary exemption, and we emphasize that our decision to grant a more limited exemption than that requested does not foreclose Terrafugia from applying for such an extension at the end of the exemption period.

E. Labels

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified requirements of FMVSS Nos. 110, 126, 205, and 208. Under § 555.9(b), a manufacturer of an exempted vehicle must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable FMVSSs in effect on the date of manufacture ''except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____.'' This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations in which an exemption covers part but not all of an FMVSS. We believe that a statement that the vehicle has been exempted from an FMVSS generally, without an indication that the exemption is limited to the specified provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of the standard's requirements. Moreover, we believe that the addition of a reference to such provisions by number would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe that, in reference to this exemption, the two labels should read in, relevant part, ''except for the General Tire Requirements and Rim Requirements of Standard No. 110, Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less, Standard No. 126, Electronic Stability Control Systems, the Glazing Requirements of Standard No. 205, Glazing Materials, and the Advanced Air Bag Requirements of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *.'' We note that the phrases used to describe the specific exempted provisions are abbreviated forms of the titles of the sections of the standards from which Terrafugia is exempted. We believe it is reasonable to interpret § 555.9 as requiring this language.

Additionally, the Transition® must have the permanently affixed ''sun visor air bag warning label'' and the removable ''warning label on the dashboard'' that NHTSA developed/requires for vehicles without advanced air bags. The requirements for these labels are described in paragraph S4.5.1 of FMVSS No. 208.

F. Decision

In consideration of the foregoing, we conclude that compliance with certain requirements of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles With a GVWR of 4,536 kilograms (10,000 pounds) or Less,* FMVSS No. 126, *Electronic Stability Control Systems,* FMVSS No. 205, *Glazing Materials,* and the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that the granting of an exemption from these requirements would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Terrafugia is granted NHTSA Temporary Exemption No. EX 11–02, from S4.1 and S4.4 of FMVSS No. 110, FMVSS No. 126, S5 of FMVSS No. 205, and S14 (apart from S14.5.1(a)) of FMVSS No. 208 beginning on June 1, 2012. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(a) of FMVSS No. 208, Terrafugia must certify to the unbelted 50th percentile adult male dummy barrier impact test requirement that applied prior to September 1, 2006 (S5.1.2(a) of FMVSS No. 208). For purposes of this exemption, the unbelted sled test in S13 of FMVSS No. 208 is an acceptable option for that requirement.

This exemption is for the Transition®. The exemption from FMVSS No. 126 and S14 (apart from S14.5.1(a)) of FMVSS No. 208 shall remain in effect for one year from the effective date, and the exemption from S4.1 and S4.4 of FMVSS No. 110 and S5 of FMVSS No. 205 shall remain in effect for three years from the effective date, as indicated in the DATES section of this document. (49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: June 16, 2011.

David L. Strickland,

Administrator.

[FR Doc. 2011–16222 Filed 6–28–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One Individual and One Entity Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one newly-designated individual and one newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designations by the Director of OFAC of the four individuals identified in this notice, pursuant to Executive Order 13224, are effective on June 23, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On June 23, 2011 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one individual and one entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. SHAHRIYARI, Behnam (a.k.a. SHAHRIARI, Behnam; a.k.a. SHAHRYARI, Behnam); DOB 1968; nationality Iran (individual) [SDGT].

2. BEHNAM SHAHRIYARI TRADING COMPANY, Ziba Building, 10th floor, North Sohrevardi Street, Tehran, Iran [SDGT].

Dated: June 23, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–16311 Filed 6–28–11; 8:45 am]

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FEDERAL REGISTER

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Part II

Office of Personnel Management

5 CFR Part 890; 48 CFR Parts 1602, 1615, et al.
Federal Employees Health Benefits Program: New Premium Rating Method for Most Community Rated Plans; Withdrawal; Final Rules

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890; 48 CFR Parts 1602, 1615, 1632, and 1652

RIN 3206–AM39

Federal Employees Health Benefits Program: New Premium Rating Method for Most Community Rated Plans; Withdrawal

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim final rule; withdrawal.

SUMMARY: The U.S. Office of Personnel Management (OPM) is withdrawing an interim final regulation that appeared in the **Federal Register** of June 23, 2011 (76 FR 36857). The document amends the Federal Employees Health Benefits (FEHB) regulations at 5 CFR Chapter 89 and also the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) at 48 CFR Chapter 16 and would replace the procedure by which premiums for community rated FEHB carriers are compared with the rates charged to a carrier's similarly sized subscriber groups (SSSGs).

DATES: The interim final rule published on Thursday, June 23, 2011 at 76 FR 36857 is withdrawn as of June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Louise Dyer, Senior Policy Analyst, (202) 606–0770, or by e-mail to *Louise.Dyer@opm.gov.*

SUPPLEMENTARY INFORMATION: This rule is being withdrawn due to the version submitted to the **Federal Register** was incorrect and contained numerous errors. In today's issue of the **Federal Register**, you will find the correct version of the interim rule.

U.S. Office of Personnel Management.

Edward M. DeHarde,

Program Manager, National Healthcare Operations.

[FR Doc. 2011–16280 Filed 6–28–11; 8:45 am]

BILLING CODE 6325–24–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

48 CFR Parts 1602, 1615, 1632, and 1652

RIN 3206–AM39

Federal Employees Health Benefits Program: New Premium Rating Method for Most Community Rated Plans

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim final rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing an interim final regulation amending the Federal Employees Health Benefits (FEHB) regulations and also the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). This interim final regulation replaces the procedure by which premiums for community rated FEHB carriers are compared with the rates charged to a carrier's similarly sized subscriber groups (SSSGs). This new procedure utilizes a medical loss ratio (MLR) threshold, analogous to that defined in both the Affordable Care Act (ACA, Pub. L. 111–148) and the Department of Health and Human Services (HHS) interim final regulation published December 1, 2010 (75 FR 74864). The purpose of this interim final rule is to replace the outdated SSSG methodology with a more modern and transparent calculation while still ensuring that the FEHB is receiving a fair rate. This will result in a more streamlined process for plans and increased competition and plan choice for enrollees. The new process will apply to all community rated plans, except those under traditional community rating (TCR). This new process will be phased in over two years, with optional participation for non-TCR plans in the first year.

DATES: This interim final rule is effective July 29, 2011. Comments are due on or before August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Louise Dyer, Senior Policy Analyst, (202) 606–0770, or by e-mail to *Louise.Dyer@opm.gov*.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management is issuing an interim final regulation to establish a new rate-setting procedure for most FEHB plans that are subject to community rating. Currently, a carrier's rates for its community rated FEHB plans are compared with the rates the carrier charges to its similarly sized subscriber groups (SSSGs) during a reconciliation process in the plan year. This interim final regulation replaces this SSSG process with a requirement that most community rated plans meet an FEHB-specific medical loss ratio (MLR) target. Plans that are required to use traditional community rating (TCR) per their state regulator will be exempt from this new rate-setting procedure. This MLR-based rate setting process will ensure the Government and Federal employees are receiving a fair market rate and a good value for their premium dollars.

ACA Medical Loss Ratio Requirement

Effective for 2011, most health insurance policies, including those issued under FEHB, are required to meet a medical loss ratio standard set forth in Federal law, or pay rebates to the individuals insured. This MLR requirement was enacted in the ACA in a new section 2718 of the Public Health Service Act titled ''Bringing Down the Cost of Health Care Coverage,'' and is intended to control health care costs by limiting the percentage of premium receipts that can be used for non-claim costs (costs for purposes other than providing care or improving the quality of care). The details of this ACA-required MLR formula comparing non-claim costs to overall expenditures were promulgated in an HHS interim final regulation published in the Federal Register on December 1, 2010 (75 FR 74864). Non-claim costs include plan administration costs, marketing costs, and profit. ACA requires that health insurance issuers, beginning in calendar year 2011, meet an MLR of 85% for large groups, (i.e., non-claim costs may not exceed 15%). If an issuer does not meet the MLR target, it must pay a premium rebate.

FEHB-Specific MLR Threshold

Under this OPM regulation, in addition to being subject to the ACA-required MLR, most FEHB community rated plans will be required to meet an FEHB-specific MLR threshold for the annual rates negotiated for their Federal enrollment. This new requirement will be included in 48 CFR 1615.402(c)(3)(ii) and will be phased in over two years. If the plan falls below the FEHB-specific MLR threshold, the plan must pay a subsidization penalty into a newly established Subsidization Penalty Account (defined in 5 CFR 890.503(c)(6)). The FEHB-specific MLR threshold will be set in OPM's annual rate instructions to FEHB plans published in the spring of each year, rather than by regulation. If the plan has met or exceeded the FEHB-specific MLR threshold, there is no exchange of funds or adjustment of premiums necessary.

This rule establishes a process by which FEHB community rated plans (other than plans using TCR) will calculate and submit the MLR for their FEHB plans. This process will take place after the end of the plan year and after the carrier has calculated and submitted to HHS the ACA-required MLR. Under this regulation, premium rates for community rated plans will continue to be negotiated prior to the plan year based on the plan's community rating methodology. There

will continue to be a reconciliation process starting April 30 of the plan year to update any new information received after rates were set but prior to January 1 of the plan year, including book rates filed with the state. Once SSSGs have been phased out, most community rated plans will no longer be required to submit SSSG information and the reconciliation process will not include comparison with SSSGs. Instead of the SSSG comparison, there will be a separate settlement with OPM after the end of the plan year based on the FEHB-specific MLR threshold.

OPM will base its MLR definitions on the HHS interim final rule of December 1, 2010. However, while the HHS MLR will be calculated as a three-year sum, the FEHB-specific MLR threshold will be calculated on a one-year basis to be consistent with the annual renegotiation of FEHB premiums. The HHS interim final regulation allows for a credibility adjustment for the ''special circumstance of smaller plans, which do not have sufficient experience to be statistically valid for purposes of the rebate provisions.'' The FEHB-specific MLR threshold calculation may also include a credibility adjustment, but, if used, the threshold will be lower, due to the relative small size of FEHB enrollee populations. The FEHB-specific MLR threshold target may be different from the ACA large group MLR of 85%. In calculating the FEHB-specific MLR threshold, plans will be aggregated as defined in that year's annual rate instructions issued to carriers.

The use of an FEHB-specific MLR threshold in FEHB community rate setting will allow for the removal of SSSGs for non-TCR plans while preserving incentives for carriers to provide health insurance that is affordable and that has appropriate controls on administrative overhead. In recent years, there have been a declining number of fully insured plans in the commercial market. Carriers are increasingly unable to find groups similarly sized to the FEHB group for comparison and are withdrawing from the program as a result.

This OPM regulation requires that the FEHB-specific MLR threshold calculation take place after the ACA-required MLR calculation and any rebate amounts due to the FEHB as a result of the ACA-required calculation will not be included in the FEHB-specific MLR threshold calculation. The HHS interim final MLR rule requires health insurance issuers to submit their MLR calculation by June 1 of the year following the MLR reporting year. Issuers must report information related to earned premiums and expenditures in various categories, including reimbursement for clinical services provided to enrollees, activities that improve health care quality, and all other non-claims costs. The HHS interim final regulation specifies that the report will include claims incurred in the MLR reporting year and paid through March of the following year.

To complete the FEHB-specific MLR threshold calculation after the carrier calculated the ACA-required MLR, FEHB carriers will report claims incurred in the plan year and paid through March 31 of the following year. FEHB carriers will report the same categories of information for the FEHB-specific MLR threshold calculation as reported for the ACA-required MLR calculation; however, the FEHB-specific MLR threshold calculation data will be based only on the FEHB population of the health plan. Data will be reported to OPM with the rate filing for the year following the MLR reporting year. Specific dates for reporting MLR will be included in the rate instructions which are typically released in April of each year.

Under the current SSSG methodology, adjustments due to SSSG discounts are either deposited into plan-specific contingency reserve accounts or factored into reduced premiums for enrollees in the following plan year. Under this rule, if the FEHB-specific MLR threshold calculation process requires an FEHB carrier to pay a subsidization penalty, it will not be deposited into its own contingency reserve fund but will instead be deposited into a Subsidization Penalty Account established in the U.S. Treasury by OPM for this purpose. These funds will be annually distributed, on a pro-rata basis, to the contingency reserves of all non-TCR community rated plans.

Issuers failing to meet the FEHB-specific MLR threshold must make any subsidization penalty payment within 60 days of notification of amounts due. This payment would take place via wire transfer, similar to the way carriers make payments required by the current reconciliation process. In the case of carrier non-compliance, this interim final rule includes authority for OPM to garnish premium payments to the carrier in 1632.170(a)(3).

As stipulated in Section 8910 of Title 5 of the U.S. Code, OPM will include a provision in contracts with carriers that requires the carrier to:

- Furnish reasonable reports to OPM to enable it to carry out its functions under this chapter.
- Permit OPM and GAO to examine records, including those from affiliates and vendors, as may be necessary to carry out the purpose of this chapter.

Under this regulation, the new methodology becomes effective for all non-TCR plans for the 2013 plan year. For the 2012 plan year, all non-TCR FEHB plans have an option of either: (1) Following the SSSG requirements as currently stated and providing OPM the FEHB-specific 2011 and 2012 MLR threshold calculation by the date specified in the 2012 annual instructions; or (2) moving to the FEHB-specific MLR threshold calculation with no requirement to submit SSSG information for 2012. The FEHB-specific MLR threshold for plans choosing the second option for 2012 will be set similar to the average MLR of FEHB's experience rated plans. OPM expects to set the FEHB-specific MLR threshold for 2013 and beyond at a reasonable level consistent with the MLR that community rated plans are currently achieving under the SSSG mechanism, but no lower than 85%. For those plans that stay under the SSSG methodology, there would be no financial impact to the plans from this regulation in the 2012 plan year. Community rated FEHB plans that are required by state law to use TCR will be required to continue using the SSSG methodology.

Background

There are two methods of determining premium rates for FEHB plans: Community rating and experience rating. This regulatory change will apply to those FEHB plans that are subject to community rating. Under current regulation, the community rated plan premiums are compared to the premiums of SSSGs to ensure that FEHB receives the lowest available premium rate.

TCR plans are those that set the same rates for all groups in a community regardless of the health risks and other characteristics of any specific group. Under TCR, an FEHB group must be charged the same premium as all other groups in the area that receive the same set of benefits. Healthier groups subsidize the less healthy groups that use more health services. This subsidization is by design, and the health plan cannot adjust premiums for a specific group to reflect the percentage of premium revenue used for claim costs versus administration. Therefore, OPM believes it inappropriate to impose an MLR-based premium rating methodology on those FEHB plans that use TCR. Currently, the only FEHB plans that use TCR are those operating in states that require it.

Under current regulations, the premiums for community rated FEHB

plans are negotiated with OPM the August before the plan year begins on January 1. Those negotiated rates are based on comparable rates offered to other plans in the community, with some plans adjusting for age, gender, and health risks of the community. Beginning in April of the plan year, OPM conducts a reconciliation process to update any change in rate assumptions that occurred after rates were set but before January 1 of the plan year, such as new book rates filed in the state in which the plan is issued. During this reconciliation process, each FEHB community rated plan determines the two appropriate employer-based subscriber groups that will serve as SSSGs for comparison. If a plan has provided a discounted rate to one of the SSSGs, the plan must match that discount in the rate provided to FEHB. SSSGs are defined in FEHBAR at 48 CFR 1602.170–13.

The FEHB Program has experienced a decline in the number of participating HMO plans in part due to concerns with the comparison of rates to SSSGs. OPM's goal is to offer Federal employees, annuitants, and their families a broad choice of health insurance plans. To that end, where there are significant barriers to entry or aspects of the program that increase risk beyond an acceptable level for carriers, OPM is taking steps to mitigate risks and eliminate barriers to entry.

The current methodology involving SSSG comparison has been cited by some health plans as creating uncertainty and risk in the FEHB Program. Uncertainty and risk have increased over the years as employers have moved away from offering fully-insured products with community rates for their employees. This trend has resulted in fewer appropriately-sized employer groups that can be used in the SSSG calculation. Under the current methodology, SSSGs are sometimes much smaller than the FEHB group, diverging from the original intent of the regulation. There are several cases in which FEHB groups are compared to groups much less than half their size for the purpose of rate determination.

Waiver of Proposed Rulemaking

OPM has determined that it would be impracticable, unnecessary, and contrary to the public interest to delay putting the provisions of this interim final regulation in place until a public notice and comment process has been completed. Under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. FEHB plans must be in possession of full information about OPM's rating methodology prior to July 1, 2011 in order to submit proposals for the 2012 plan year. In the absence of the option of a new rating methodology, FEHB plans have indicated they may discontinue participation in FEHB. Fewer participating FEHB plans would constrain competition and limit choice for FEHB enrollees. This OPM interim final regulation was completed as quickly as possible following the publication of the regulatory definition of medical loss ratio by HHS in December 2010, upon which this rule relies. Further, plans have the option of subjecting themselves to the existing rating methodology during the 2012 plan year, should they choose to do so. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis, including a 60-day public comment period.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule is not considered a major rule because OPM estimates that premiums paid by Federal employees and agencies will be very similar under the old and new payment methodologies. This rule will be cost-neutral. OPM's intention is to keep FEHB premiums stable and sustainable using this more transparent methodology.

List of Subjects

5 CFR Part 890

Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

48 CFR Parts 1602, 1615, 1632, and 1652

Government employees, Government procurement, Health insurance Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

John Berry,

Director.

For the reasons set forth in the preamble, OPM amends Part 890 of title 5 CFR and chapter 16 of title 48 CFR (FEHBAR) as follows:

TITLE 5—ADMINISTRATIVE PERSONNEL

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Subpart E—Contributions and Withholdings

■ 1. The authority citation for subpart E of part 890 is added to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.303 also issued under Sec. 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; Subpart L also issued under Sec. 599C of Public Law 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under Secs. 11202(f), 11232(e), 11246(b) and (c) of Public Law 105–33, 111 Stat. 251; Sec. 721 of Public Law 105–261, 112 Stat. 2061 unless otherwise noted; Sec. 890.111 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515.

■ 2. Add § 890.503(c)(6) to read as follows:

§ 890.503 Reserves.

* * * * *

(c) * * *

(6) *Subsidization penalty reserve.* This reserve account shall be credited with all subsidization penalties levied against community rated plans outlined in 48 CFR 1615.402(c)(3)(ii)(B). The funds in this account shall be annually distributed to the contingency reserves of all community rated plans subject to the FEHB-specific medical loss ratio threshold on a pro-rata basis. The funds will not be used for one specific carrier or plan.

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

PART 1602—DEFINITIONS OF WORDS AND TERMS

■ 3. The authority citation for part 1602 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 4. Section 1602.170–2(b) is revised to read as follows:

§ 1602.170–2 Community rate.

* * * * *

(b) *Adjusted community rate* means a community rate which has been adjusted for expected use of medical resources of the FEHBP group. An adjusted community rate is a prospective rate and cannot be retroactively revised to reflect actual experience, utilization, or costs of the FEHBP group, except as described in § 1615.402(c)(4).

■ 5. Section 1602.170–5(b) is revised to read as follows:

§ 1602.170–5 Cost or pricing data.

* * * * *

(b) *Community rated carriers.* Cost or pricing data for community rated carriers is the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and similarly sized subscriber groups (SSSGs). Such data include, but are not limited to, capitation rates; prescription drug, hospital, and office visit benefits utilization data; trend data; actuarial data; rating methodologies for other groups; standardized presentation of the carrier's rating method (age, sex, etc.) showing that the factor predicts utilization; tiered rates information; ''step-up'' factors information; demographics such as family size; special benefit loading capitations; and adjustment factors for capitation. After the 2012 plan year, reconciled rates for community rated carriers, other than those required by state law to use Traditional Community Rating (TCR), will be required to meet an FEHB-specific medical loss ratio threshold published annually in OPM's rate instructions to FEHB carriers.

■ 6. Redesignate § 1602.170–14 through § 1602.170–15 as § 1602.170–15 through § 1602.170–16.

■ 7. Add new § 1602.170–14 to read as follows:

§ 1602.170–14 FEHB-specific medical loss ratio threshold calculation.

(a) *Medical loss ratio* (MLR) means the ratio of plan incurred claims, including the issuer's expenditures for activities that improve health care quality, to total premium revenue determined by OPM, as defined by the Department of Health and Human Services.

(b) The FEHB-specific MLR will be calculated on an annual basis, with the prior year's ratio having no effect on the current plan year. This FEHB-specific MLR will be measured against an FEHB-specific MLR threshold to be put forth by OPM in the annual rate instruction letter to FEHB carriers.

(c) OPM will set a credibility adjustment to account for the special circumstances of small FEHB plans in annual rate instructions to carriers.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1615—CONTRACTING BY NEGOTIATION

■ 7. The authority citation for part 1615 continues to read as follows:

Authority: Audit and records—5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301. Negotiation—5 U.S.C. 8902

■ 8. Revise § 1615.402(c)(3) to read as follows:

§ 1615.402 Pricing policy.

* * * * *

(c) * * *

(3) For plan year 2012, plans will have the option of continuing to use the similarly sized subscriber group (SSSG) rating methodology described in paragraph (c)(3)(i) of this section or using the MLR rating methodology described in paragraph (c)(3)(ii) of this section. All non-traditional community rated (TCR) plans will be required to submit FEHB-specific MLR information for every year beginning with plan year 2011.

(i) *Similarly sized subscriber group (SSSG) methodology.* (A) For contracts with 1,500 or more enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the rates for the carrier's SSSGs. The carrier will provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(B) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments will be based on the lower of the two rates determined by using the methodology (including discounts) the carrier used for the two SSSGs.

(C) FEHB Program community-rated carriers will comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(ii) *FEHB-specific medical loss ratio (MLR) threshold methodology.* (A) For contracts with 1,500 or more enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the medical loss ratio (MLR) as defined in the ACA (Public Law 111–148) and as defined by HHS in implementing regulations for all FEHB community rated plans other than those required by state law to use Traditional Community Rating. The carrier will provide cost or pricing data, as well as the FEHB-specific MLR threshold data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(B) Contracts will be subject to a subsidization penalty if OPM determines that the FEHB group did not meet the FEHB-specific MLR threshold specified in the annual rate instruction to carriers. Such a subsidization penalty will be deposited into a Subsidization Penalty Account held at the U.S. Treasury. This Subsidization Penalty Account will be held in common with all community rated carriers and will be annually distributed to the contingency reserve accounts of all non-TCR community rated plans on a pro-rata basis.

(C) FEHB Program community-rated carriers will comply with the MLR criteria, including the FEHB-specific MLR threshold provided by OPM in the rate instructions for the applicable contract period. FEHB plans that are required by state law to use TCR are exempt from this requirement and will use the SSSG methodology outlined in paragraph (c)(3)(i) of this section.

■ 9. Revise § 1615.406–2 to read as follows:

§ 1615.406–2 Certificate of accurate cost or pricing data for community rated carriers.

The contracting officer will require a carrier with a contract meeting the requirements in 1615.402(c)(2) or 1615.402(c)(3) to execute the Certificate of Accurate Cost or Pricing Data contained in this section. A carrier with a contract meeting the requirements in 1615.402(c)(2) will complete the Certificate and keep it on file at the

carrier's place of business in accordance with 1652.204–70. A carrier with a contract meeting the requirements in 1615.402(c)(3) will submit the Certificate to OPM along with its rate reconciliation, which is submitted during the first quarter of the applicable contract year.

(Beginning of certificate)

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers

This is to certify that, to the best of my knowledge and belief: (1)(a) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the ____*FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed; and (b) the methodology used to determine the FEHB Program rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Groups if complying with § 1602.170–13.

or

(c) the determination of the carrier's FEHB-specific medical loss ratio for ** is accurate, complete, and consistent with the methodology as stated in § 1615.402(c)(3)(ii) if complying with § 1602.170–14.

* Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.

** Insert the year for which the MLR calculation applies. Normally, this will be the year before the year being reconciled.

Firm: _____

Name: _____

Signature: _____

Date of Execution: _____

(End of certificate)

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1632—CONTRACT FINANCING

■ 10. The authority citation for part 1632 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 11. Add § 1632.170(a)(3) to read as follows:

§ 1632.170 Recurring premium payments to carriers.

(a) * * *

(3) Any subsidization penalty levied against a community rated plan as outlined in 48 CFR 1615.402(c)(3)(ii)(B) must be paid within 60 days from notification. If payment is not received within the 60 day period, OPM will withhold from the community rated carriers the periodic premium payment payable until fully recovered. OPM will deposit the withheld funds in the subsidization penalty reserve described in 5 CFR 890.503(c)(6).

* * * * *

SUBCHAPTER H—CLAUSES AND FORMS

PART 1652—CONTRACT CLAUSES

■ 12. The authority citation for part 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 13. Revise 1652.216–70(b)(2) through (b)(5) as follows:

§ 1652.216–70 Accounting and price adjustment.

* * * * *

(b) * * *

(2) The subscription rates agreed to in this contract shall be based on paragraphs (b)(2)(i) or (ii) of this clause. Effective January 1, 2013 all community rated plans must base their rating methodology on the medical loss ratio (MLR) threshold described in paragraph (b)(2)(i) of this clause unless traditional community rating is mandated in the state where they are domiciled:

(i) The subscription rates agreed to in this contract shall meet the FEHB-specific MLR threshold as defined in FEHBAR 1602.170–14. The ratio of a plan's incurred claims, including the issuer's expenditures for activities that improve health care quality, to total premium revenue shall not be lower than the FEHB-specific MLR threshold published annually by OPM in its rate instructions.

(ii) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber groups (SSSGs) as defined in FEHBAR 1602.170–13. The subscription rates shall be determined according to the carrier's established policy, which must be applied consistently to the FEHBP and to the carrier's SSSGs. If an SSSG receives a rate lower than that determined according to the carrier's established policy, it is considered a discount. The FEHBP must receive a discount equal to or greater than the carrier's largest SSSG discount.

(3) If the rates are determined by SSSG comparison, then:

(i) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the lower of the two SSSGs, the carrier may include an adjustment to the Federal group's rates for the next contract period, except as noted in paragraph (b)(3)(iii) of this clause.

(ii) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the lower of the two SSSGs, the carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the lower rated SSSG, except as noted in paragraph (b)(3)(iii) of this clause.

(iii) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to SSSGs. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(4) If rates are determined by comparison with the FEHB-specific MLR threshold, then if the MLR for the carrier's FEHB plan is found to be lower than the published FEHB-specific MLR threshold, the carrier must pay a subsidization penalty into a subsidization penalty account.

(5) The following apply to community rated plans, regardless of the rating methodology:

(i) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract period on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(ii) For contract years beginning on or after January 1, 2009, in the event this contract is not renewed, the final rate reconciliation will be performed. The carrier must promptly pay any amount owed to OPM. Any amount recoverable by the carrier is limited to the amount in the contingency reserve for the terminating plan as of December 31 of the terminating year.

(iii) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process in any circumstance.

* * * * *

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S.J. Res. 7/P.L. 112–19
Providing for the reappointment of Shirley Ann Jackson as a citizen regent of the Board of Regents of the Smithsonian Institution. (June 24, 2011; 125 Stat. 231)

S.J. Res. 9/P.L. 112–20
Providing for the reappointment of Robert P. Kogod as a citizen regent of the Board of Regents of the Smithsonian Institution. (June 24, 2011; 125 Stat. 232)

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