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DEPARTMENT OF ENERGY

10 CFR Parts 433 and 435

[Docket No. EERE–2011–BT–STD–0005]

RIN 1904–AC41

Energy Efficiency Design Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings and New Federal Low-Rise Residential Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is publishing this final rule to implement provisions in the Energy Conservation and Production Act (ECPA) that require DOE to update the baseline Federal energy efficiency performance standards for the construction of new Federal buildings, including commercial and multi-family high-rise residential buildings and low-rise residential buildings. This rule updates the baseline Federal commercial standard to the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2007. This rule also updates the baseline Federal residential standard to the 2009 International Energy Conservation Code (IECC).

DATES: This rule is effective October 11, 2011. The incorporation by reference of certain publications in the rule is approved by the Director of the Federal Register as of October 11, 2011.

ADDRESSES: Docket: For access to the docket to read background documents or comments received by DOE, go to the U.S. Department of Energy, (Office of Building Technologies Resource Room), 950 L'Enfant Plaza, SW., Washington, DC 20024 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Building Technologies Resource Room. Resource Room hours are between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Erbesfeld, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 287–1874, *e-mail: Michael.Erbesfeld@ee.doe.gov,* or Ms. Ami Grace-Tardy, Esq., U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5709, *e-mail: Ami.Grace-Tardy@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This rulemaking incorporates by reference the following standard into Part 433:

- ANSI/ASHRAE/IESNA Standard 90.1–2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, 2007, American Society of Heating Refrigerating and Air-Conditioning Engineers, Inc., ISSN 1041–2336.

Copies of this standard are available from the American Society of Heating Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, GA 30329, (404) 636–8400, *http://www.ashrae.org//.*

This rulemaking also incorporates by reference the following standard into part 435:

- ICC International Energy Conservation Code (IECC), 2009 Edition, January 2009, International Code Council, ISBN 978–1–58001–742–8.

Copies of this standards are available from International Code Council, 500 New Jersey Avenue, NW., 6th Floor, Washington, DC 20001, 1–888–ICC–SAFE (422–7233) or (202) 370–1800, *http://www.iccsafe.org/Pages/default.aspx.*

I. Introduction
II. Discussion of Today's Action
III. Compliance Date
IV. Reference Resources
V. Regulatory Analysis
VI. Congressional Notification

I. Introduction

Section 305 of the Energy Conservation and Production Act (ECPA), as amended, requires DOE to establish building energy efficiency standards for all new Federal buildings. (42 U.S.C. 6834(a)(1)) The standards established under section 305(a)(1) of ECPA must contain energy efficiency measures that are technologically feasible, economically justified, and meet the energy efficiency levels in the applicable voluntary consensus energy codes specified in section 305. (42 U.S.C. 6834(a)(1)–(3))

Under section 305 of ECPA, the referenced voluntary consensus code for commercial buildings (including multi-family high rise residential buildings) is the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1 and the referenced code for low-rise residential buildings is the International Energy Conservation Code (IECC). (42 U.S.C. 6834(a)(2)(A)) DOE codified these referenced codes into energy efficiency standards in 10 CFR parts 433, 434, and 435. Also under section 305 of ECPA, DOE must establish, by rule, revised Federal building energy efficiency performance standards for new Federal buildings that require such buildings be designed to achieve energy consumption levels that are at least 30 percent below the levels established in the referenced codes, if life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(i)(I))

Under section 305 of ECPA, not later than one year after the date of approval of each subsequent revision of the ASHRAE Standard or the IECC, DOE must determine whether to amend the Federal building standards with the revised voluntary standard based on the cost-effectiveness of the revised voluntary standard. (42 U.S.C. 6834(a)(3)(B)) It is this requirement that today's rulemaking addresses. ASHRAE Standard 90.1 and the IECC have been updated from the versions currently referenced in DOE's regulations at 10 CFR parts 433 and 435. DOE is now revising the baseline Federal building standards for 10 CFR parts 433 and 435.

Section 306(a) of ECPA provides that each Federal agency and the Architect of the Capitol must adopt procedures to ensure that new Federal buildings will meet or exceed the Federal building energy efficiency standards established under section 305. (42 U.S.C. 6835(a)) Section 306(b) bars the head of a Federal agency from expending Federal funds for the construction of a new Federal building unless the building meets or

exceeds the applicable Federal building energy standards established under section 305. (42 U.S.C. 6835(b)) This includes both the requirement that all new Federal buildings comply with the baseline standards in ASHRAE Standard 90.1 and the IECC and the requirement that new Federal buildings achieve energy consumption levels at least 30 percent below these minimum baseline standards where life-cycle cost-effective. (42 U.S.C. 6834 (a)(3)(A))

II. Discussion of Today's Action

DOE is issuing today's action as a final rule. As indicated above, DOE must determine whether the energy efficiency standards for new Federal buildings should be updated to reflect revisions to ASHRAE Standard 90.1 or the IECC based on the cost-effectiveness of the revisions. (42 U.S.C. 6834(a)(3)(B)) In today's final rule, DOE determines that the energy efficiency standards for new Federal buildings should be updated to reflect the 2007 revisions to ASHRAE Standard 90.1 and the 2009 revisions to the IECC based on the cost-effectiveness of the revisions.

DOE reviewed ASHRAE Standard 90.1 and the IECC standard for DOE's state building codes program and determined that the 2007 version of ASHRAE Standard 90.1 and the 2009 version of the IECC would achieve greater energy efficiency than their respective prior versions. These determinations were subject to notice and comment. See 75 FR 54117 (September 3, 2010) and 75 FR 54131 (September 3, 2010). In those prior determinations, and again in today's rule, DOE states that the cost-effectiveness of revisions to the voluntary codes is considered through DOE's statutorily directed involvement in the codes process. See 75 FR 54121. Section 307 of ECPA requires DOE to participate in the ASHRAE and IECC codes development process and to assist in determining the cost-effectiveness of the voluntary standards. (42 U.S.C. 6836) DOE is required to periodically review the economic basis of the voluntary building energy codes and participate in the industry process for review and modification, including seeking adoption of all technologically feasible and economically justified energy efficiency measures. (42 U.S.C. 6836(b))

ASHRAE Standard 90.1 is developed through an American National Standards Institute (ANSI) consensus process. The ANSI consensus process involves representatives of producers (industry), users (owners and designers), and general (advocates and government) segments of the building industry. Part of that process involves development of cost-effectiveness criteria to use in the development of Standard 90.1. Another part of the process is extensive public review and comment of each change to Standard 90.1. During the course of the public review and comment process, cost-effectiveness is often a topic. One of the objectives considered by the committee developing Standard 90.1 is for the requirements of Standard 90.1 to be cost-effective for use in the private sector. The 90.1 committee uses a scalar ratio for cost-effectiveness based on ASTM Standard E917–Standard Practice for Measuring Life-Cycle Costs of Buildings and Building Systems.

Similarly, the IECC is developed by the International Code Council (ICC) in a government-consensus process. In the ICC process, only voting members of the ICC who are representative of state and local governments and who are responsible for code enforcement vote on any changes to the IECC. The public may participate in hearings and the hearings are widely attended by the building community. The process in the ICC is somewhat different than in Standard 90.1 in that explicit use of life-cycle costing is not required for each change proposed to the IECC. However, proponents of changes are required to state if a proposed change will increase the first cost of construction and the cost-effectiveness of proposals is widely debated during the hearings. Given the level of debate by the entire building community, DOE believes that the end result of the ICC code development process is an energy code that is cost-effective.

In today's rule, DOE is amending the energy efficiency standards applicable to new Federal buildings based on the determinations made by DOE as to the energy efficiency improvements of ASHRAE Standard 90.1–2007 and the 2009 IECC, as compared to their respective predecessor versions, and based on the considerations of cost-effectiveness incorporated into the codes processes, as well as DOE's involvement in those processes. This final rule amends 10 CFR Parts 433 and 435 to update the referenced baseline Federal energy efficiency performance standards. No other changes are proposed to 10 CFR parts 433 and 435 by this rule.

DOE notes that it is currently working on preliminary determinations for ASHRAE Standard 90.1–2010 and the 2012 IECC. If DOE finalizes these determinations, the Department intends to update 10 CFR Part 433 with ASHRAE Standard 90.1–2010 and 10 CFR part 435 with the 2012 IECC.

III. Compliance Date

Today's final rule applies to new Federal buildings for which design for construction begins on or after one year from the date of this notice. Such buildings must be designed to exceed the energy efficiency level of the appropriate updated voluntary standard by 30 percent if life-cycle cost-effective. However, at a minimum, such buildings must achieve the energy efficiency equal to that of the appropriate updated voluntary standard. One year lead time is consistent with DOE's previous updates to the energy efficiency baselines and the original statutory mandate for Federal building standards. One year lead time helps minimize compliance costs to agencies, which may have planned buildings in various stages of design, and allows for design changes to more fully consider life-cycle cost-effective measures (as opposed to having to revise designs in development, which may make incorporation of energy efficiency measure more difficult or expensive.)

IV. Reference Resources

The Department originally prepared this list of resources to help Federal agencies achieve building energy efficiency levels of at least 30 percent below ASHRAE Standard 90.1–2004 or the 2004 IECC. The Department has reviewed these resources and believes that they are still applicable to helping agencies achieve building energy efficiency levels of at least 30% better than ASHRAE Standard 90.1–2007 or the 2009 IECC. The Department has updated this resource list as necessary. These resources come in many forms and in a variety of media. Resources are provided for three categories: For all buildings, specifically for commercial and multi-family high-rise residential buildings, and specifically for low-rise residential buildings.

Resources for All Buildings

Energy Efficient Products—U.S. DOE Federal Energy Management Program and U.S. Environmental Protection Agency (EPA) ENERGY STAR Program

http://www.eere.energy.gov/femp/procurement/ and *http://www.energystar.gov/products.*

Federal agencies are required by the Energy Policy Act of 2005 to specify Federal Energy Management Program (FEMP) designated or ENERGY STAR equipment, including building mechanical and lighting equipment and builder-supplied appliances, for purchase and installation in all new construction. This equipment is generally more efficient than the

corresponding requirements of ASHRAE Standard 90.1–2004 and the 2004 IECC, and may be used to achieve part of the savings required of Federal building designs. (Today's rule does not specifically address the use of this equipment, but this Web site is listed for convenience because it is a very useful resource for achieving part of the energy savings required by the rule.)

Life-Cycle Cost Analysis—U.S. DOE Federal Energy Management Program

http://www.access.gpo.gov/nara/cfr/waisidx_04/10cfr436_04.html.

The life-cycle cost analysis rules promulgated in 10 CFR part 436 Subpart A *Life-Cycle Cost Methodology and Procedures* conform to requirements in the Federal Energy Management Improvement Act of 1988 (Pub. L. 100–615) and subsequent energy conservation legislation, as well as Executive Order 13123, *Greening the Government through Efficient Energy Management.* The life-cycle cost guidance and required discount rates and energy price projections are determined annually by FEMP and the Energy Information Administration, and are published in the Annual Supplement to The National Institute of Standards and Technology Handbook 135: ''Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis'' *http://www1.eere.energy.gov/femp/pdfs/ashb10.pdf.* FEMP also provides guidance on the life-cycle cost requirements of Executive Order 13123 at *http://www1.eere.energy.gov/femp/information/download_blcc.html.*

ENERGY STAR Buildings—U.S. Environmental Protection Agency and U.S. Department of Energy

http://www.energystar.gov/index.cfm?c=new_homes.nh_features (homes) and *http://www.energystar.gov/index.cfm?c=new_bldg_design.bus_target_finder* (non-residential buildings).

ENERGY STAR is a Government-backed program helping businesses and individuals protect the environment through superior energy efficiency. The EPA specifications for ENERGY STAR-labeled homes, effective as of the date of this rule, provide a useful prescriptive guide for meeting the Federal energy efficiency standard for low-rise residential buildings. EPA plans to launch ENERGY STAR specifications for new construction and substantially rehabilitated multifamily high rise buildings in July 2011. The benchmarking tool and other information at the ENERGY STAR Target Finder Web site can be useful in determining an annual energy target for building design and computer simulations, evaluating cost-effectiveness of efficiency measures, and tracking a building's actual energy performance after construction.

Commercial Building Initiative—U.S. DOE Building Technologies Program

http://www1.eere.energy.gov/buildings/commercial_initiative/.

A collection of design approaches, tools, technologies and case studies focused on high performance buildings that achieve savings of 30 percent to 50 percent better than generally accepted good practice.

Building Energy Software Tools—U.S. DOE Building Technologies Program

http://www.eere.energy.gov/buildings/tools_directory/.

This directory provides information on building software tools for evaluation energy efficiency, renewable energy, and sustainability in buildings.

Resources for Commercial and Multi-Family High-Rise Residential Buildings

ASHRAE Standard 90.1–2007—ASHRAE

http://www.ashrae.org (search for Standard 90.1–2007) or *http://www.techstreet.com/standards/ASHRAE/90_1_2007_I_P_?product_id=1536065.*

The baseline energy efficiency standard for commercial and multi-family high-rise buildings is ANSI/ASHRAE/IESNA Standard 90.1–2007. This link also contains a link to a read-only version of Standard 90.1–2007.

Whole Building Design Guide—National Institute of Building Sciences

http://www.wbdg.org.

A portal providing one-stop access to up-to-date information on a wide range of building-related guidance, criteria and technology from a ''whole buildings'' perspective.

Advanced Energy Design Guides—ASHRAE

http://www.ashrae.org/aedg.

A set of design guides for users who wish to go beyond Standard 90.1. The design guides are targeted at 30 percent better than ASHRAE Standard 90.1–2004 (which translates to approximately 25 percent better than Standard 90.1–2007). (DOE's final determination of energy savings for Standard 90.1–2007 (available at *http://www.energycodes.gov/status/determinations_com.stm*) indicates that Standard 90.1–2007 is approximately 4.6 percent better than Standard 90.1–2004 on a site energy basis.) The design guides are available for free download.

Advanced Buildings™ Core Performance Guide™—New Buildings Institute

http://www.newbuildings.org/advanced-design/advanced-buildings.

A set of guidelines for the design, construction, and operation of new and renovated nonresidential buildings targeted at 30 percent better than ASHRAE Standard 90.1–2004 (which translates to approximately 25 percent better than ASHRAE Standard 90.1–2007).

Labs for the 21st Century—U.S. EPA and U.S. DOE

http://www.labs21century.gov/.

A Web site focused on improving the energy efficiency and environmental performance of laboratory space. This site includes training and educational resources and design tools focused on laboratories.

Resources for Low-Rise Residential Buildings

2009 IECC—ICC

http://www.iccsafe.org (search for 2009 IECC) or *http://www.iccsafe.org/Store/Pages/Product.aspx?category=0&cat=ICCSafe&id=3800X09.*

The baseline energy efficiency standard for low-rise residential buildings is the International Code Council (ICC) 2009 IECC.

Building America—U.S. Department of Energy

http://www.eere.energy.gov/buildings/building_america/.

Building America is a private/public partnership that develops energy solutions for new and existing homes. The Building America project combines the knowledge and resources of industry leaders with DOE's technical capabilities.

Energy & Environmental Building Association (EEBA)

http://www.eeba.org/.

EEBA's mission is to provide education and resources to transform the residential design, development and construction industries to profitably deliver energy efficient and environmentally responsible buildings and communities.

The Partnership for Advancing Technology in Housing (PATH)—U.S. Department of Housing and Urban Development

http://www.pathnet.org/sp.asp?mc=about_path.

PATH is dedicated to accelerating the development and use of technologies that radically improve the quality,

durability, energy efficiency, environmental performance, and affordability of America's housing. PATH is a voluntary partnership between leaders of the homebuilding, product manufacturing, insurance, and financial industries and representatives of Federal agencies concerned with housing.

V. Regulatory Analysis

A. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's final rule is a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). OMB has completed its review.

DOE believes that although cost increases vary from project to project, the construction cost of Federal buildings will increase only slightly as a result of this rule. DOE estimates a construction cost increase of less than 1% for both commercial and multi-family high-rise residential buildings and low-rise residential buildings. The cost estimate for commercial and multi-family high-rise residential buildings is based on an interpolation of a cost study conducted on several building types that are 30% or 50% more efficient than ASHRAE Standard 90.1–2004. The cost estimate for low-rise residential buildings is based on the national average cost increase of homes under the 2009 IECC compared to the 2006 IECC. The 2004 and 2006 IECC are approximately equivalent on a national average in terms of baseline cost and efficiency, therefore it is reasonable to estimate the cost increase for the 2009 IECC by comparing it to the 2006 IECC.

B. Administrative Procedure Act

DOE notes that the determinations regarding the updated voluntary consensus codes were subject to notice and comment in evaluating the voluntary consensus codes in the context of State building codes. See 75 FR 54117 (September 3, 2010) and 75 FR 54131 (September 3, 2010). The determinations made in the context of the State codes are equally applicable in the context of Federal buildings. DOE finds that providing notice and comment on the determinations again in the context of Federal buildings would be unnecessary. The fact that the voluntary consensus codes apply to Federal buildings as opposed to the general building stock does not require a different evaluation of energy efficiency and cost-effectiveness. Additionally, DOE notes that today's rule, amending standards on energy efficiency performance standards for the design and construction of new Federal buildings, is a rule relating to public property, and therefore, is not subject to the rulemaking requirements of the Administrative Procedure Act, including the requirement to publish a notice of proposed rulemaking. (See, 5 U.S.C. 553(a)(2))

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process, 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's *Web site: http://www.gc.doe.gov.*

DOE has determined that a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law for issuance of this rule. As such the analytical requirements of the Regulatory Flexibility Act do not apply.

D. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information or recordkeeping requirements. Accordingly, Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

E. Review Under the National Environmental Policy Act of 1969

The Department prepared an Environmental Assessment (EA) (DOE/EA–1871) entitled, ''Environmental Assessment for Final Rule, 10 CFR part 433, 'Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings,' and 10 CFR part 435, 'Energy Efficiency Standards for New Federal Low-Rise Residential Buildings' Baseline Standards Update,'' pursuant to the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and DOE's NEPA Implementing Procedures (10 CFR part 1021).

The EA addresses the possible incremental environmental effects attributable to the application of the final rule. The only anticipated impact would be a decrease in outdoor air pollutants resulting from decreased fossil fuel burning for energy use in Federal buildings. Therefore, DOE has issued a Finding of No Significant Impact (FONSI), pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021).

To identify the potential environmental impacts that may result from implementing the final rule on new Federal commercial buildings, DOE compared the final rule with the ''no-action alternative'' of using the current Federal standards. This comparison essentially compares the baseline standards—ANSI/ASHRAE/IESNA Standards 90.1–2004 and 90.1–2007 for Federal commercial and multi-family high-rise residential buildings, and the 2004 Supplement to the 2003 IECC to the 2009 IECC for Federal low-rise residential buildings. This comparison is identical to that undertaken by DOE in its determinations of energy savings of those standards and codes. For the purposes of this environmental assessment, DOE also investigated the impact of buildings achieving energy consumption below Standard 90.1–2007 or the 2009 IECC in increments of 10 percent, up to 50 percent. The Federal government is estimated to construct about 2000 covered, low-rise housing units annually, which, if built to realize a 30 percent savings over the 2009 IECC, will avoid 3,600 metric tons of carbon dioxide emissions, 22 metric tons of methane emissions, 1 metric ton of nitrogen oxide, and 2 metric tons of sulfur dioxide each in the first year the final rule is in effect. These savings would compound in future years as more and more Federal construction occurs.

For commercial and multi-family high-rise residential buildings, the Federal government is projected to construct 40 million square feet of Federal commercial buildings annually. Federal multi-family high-rise residential buildings are rare. Looking just at Federal commercial buildings,

and assuming a 30 percent savings over Standard 90.1–2007, 6,200 metric tons of carbon dioxide will be avoided (relative to the existing 10 CFR part 433) in the first year the final rule is in effect. These savings would compound in future years as more and more Federal construction occurs. Again assuming a 30 percent savings over Standard 90.1–2007, 24 metric tons of methane emissions will be avoided, 6 metric tons of nitrogen oxide emissions will be avoided, and 14 metric tons of sulfur dioxide emissions will be avoided, all in the first year the rule is in effect.

F. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations, 65 FR 13735. DOE examined this rule and determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and Tribal governments, in the aggregate, or by the private sector, so these requirements under the Unfunded Mandates Reform Act do not apply.

I. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that:

(1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

VI. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Parts 433 and 435

Buildings and facilities, Energy conservation, Engineers, Federal buildings and facilities, Housing, Incorporation by reference.

Issued in Washington, DC, on July 13, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, the Department of Energy amends chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 433—ENERGY EFFICIENCY STANDARDS FOR NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS

■ 1. The authority citation for part 433 continues to read as follows:

Authority: 42 U.S.C. 6831–6832; 6834–6835; 42 U.S.C. 7101 *et seq.*

■ 2. The heading for part 433 is revised to read as set forth above.

■ 3. Amend § 433.2 by removing the definition of ''Baseline building'' and adding in alphabetical order the definitions of ''ASHRAE Baseline Building 2004'' and ''ASHRAE Baseline Building 2007'' to read as follows:

§ 433.2 Definitions.

* * * * *

ASHRAE Baseline Building 2004 means a building that is otherwise identical to the proposed building but is designed to meet, but not exceed, the energy efficiency specifications in ANSI/ASHRAE/IESNA Standard 90.1–2004, Energy Standard for Buildings Except Low-Rise Residential Buildings, January 2004 (incorporated by reference, see § 433.3).

ASHRAE Baseline Building 2007 means a building that is otherwise identical to the proposed building but is designed to meet, but not exceed, the energy efficiency specifications in ANSI/ASHRAE/IESNA Standard 90.1–2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, December 2007 (incorporated by reference, see § 433.3).

* * * * *

■ 4. Revise § 433.3 to read as follows:

§ 433.3 Materials incorporated by reference.

(a) *General.* The Department of Energy incorporates by reference the energy performance standards listed in paragraph (b) of this section into 10 CFR part 433. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect DOE regulations unless and until DOE amends its energy performance standards. Material is incorporated as it exists on the date of the approval, and a notice of any change in the material will be published in the **Federal Register.** All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945. Also, this material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *ASHRAE.* American Society of Heating Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE. Atlanta, GA 30329, (404) 636–8400; or go to, *http://www.ashrae.org//.*

(1) ANSI/ASHRAE/IESNA 90.1–2004, (''ASHRAE 90.1–2004''), Energy Standard for Buildings Except Low-Rise Residential Buildings, January 2004, ISSN 1041–2336, IBR approved for §§ 433.2, 433.4, 433.5;

(2) ANSI/ASHRAE/IESNA Standard 90.1–2007, (''ASHRAE 90.1–2007''), Energy Standard for Buildings Except Low-Rise Residential Buildings, 2007, ISSN 1041–2336, IBR approved for §§ 433.2, 433.4, 433.5.

■ 5. In § 433.4, revise paragraph (a) to read as follows:

§ 433.4 Energy efficiency performance standard.

(a) (1) All Federal agencies shall design new Federal buildings that are commercial and multi-family high-rise residential buildings, for which design for construction began on or after January 3, 2007, but before August 10, 2012, to:

(i) Meet ASHRAE 90.1–2004, (incorporated by reference, see § 433.3); and

(ii) If life-cycle cost-effective, achieve energy consumption levels, calculated consistent with paragraph (b) of this section, that are at least 30 percent below the levels of the ASHRAE Baseline Building 2004.

(2) All Federal agencies shall design new Federal buildings that are commercial and multi-family high-rise residential buildings, for which design for construction began on or after August 10, 2012, to:

(i) Meet ASHRAE 90.1–2007, (incorporated by reference, see § 433.3); and

(ii) If life-cycle cost-effective, achieve energy consumption levels, calculated consistent with paragraph (b) of this section, that are at least 30 percent below the levels of the ASHRAE Baseline Building 2007.

* * * * *

■ 6. In § 433.5, revise paragraph (a) to read as follows:

§ 433.5 Performance level determination.

(a)(1) For Federal buildings for which design for construction began on or after January 3, 2007, but before August 10, 2012, each Federal agency shall determine energy consumption levels for both the ASHRAE Baseline Building 2004 and proposed building by using the Performance Rating Method found in Appendix G of ASHRAE 90.1–2004 (incorporated by reference, see § 433.3), except the formula for calculating the Performance Rating in paragraph G1.2 shall read as follows:

Percentage improvement = 100 × ((Baseline building consumption—Receptacle and process loads)—(Proposed building consumption −

Receptacle and process loads))/ (Baseline building consumption—Receptacle and process loads) (which simplifies as follows):

Percentage improvement = 100 × (Baseline building consumption—Proposed building consumption)/ (Baseline building consumption—Receptacle and process loads).

(2) For Federal buildings for which design for construction began on or after August 10, 2012, each Federal agency shall determine energy consumption levels for both the ASHRAE Baseline Building 2007 and proposed building by using the Performance Rating Method found in Appendix G of ASHRAE 90.1–2007 (incorporated by reference, see § 433.3), except the formula for calculating the Performance Rating in paragraph G1.2 shall read as follows:

Percentage improvement = 100 × ((Baseline building consumption—Receptacle and process loads)—(Proposed building consumption – Receptacle and process loads))/ (Baseline building consumption—Receptacle and process loads) (which simplifies as follows):

Percentage improvement = 100 × (Baseline building consumption—Proposed building consumption)/ (Baseline building consumption – Receptacle and process loads).

* * * * *

PART 435—ENERGY EFFICIENCY STANDARDS FOR NEW FEDERAL LOW-RISE RESIDENTIAL BUILDINGS

■ 7. The authority citation for part 435 continues to read as follows:

Authority: 42 U.S.C. 6831–6832, 6834–6836; 42 U.S.C. 8253–54, 42 U.S.C. 7101 *et seq.*

■ 8. Amend § 435.2 by removing the definition of ''Baseline building'' and adding in alphabetical order the definitions of ''IECC Baseline Building 2004'' and ''IECC Baseline Building 2009'' to read as follows:

§ 435.2 Definitions.

* * * * *

IECC Baseline Building 2004 means a building that is otherwise identical to the proposed building but is designed to meet, but not exceed, the energy efficiency specifications in the ICC International Energy Conservation Code, 2004 Supplement Edition, January 2005 (incorporated by reference, see § 435.3).

IECC Baseline Building 2009 means a building that is otherwise identical to the proposed building but is designed to meet, but not exceed, the energy efficiency specifications in the ICC International Energy Conservation Code, 2009 Edition, January 2009 (incorporated by reference, see § 435.3).

* * * * *

■ 9. Revise § 435.3 to read as follows:

§ 435.3 Materials incorporated by reference.

(a) *General.* The Department of Energy incorporates by reference the energy performance standards listed in paragraph (b) of this section into 10 CFR part 435. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect DOE regulations unless and until DOE amends its energy performance standards. Material is incorporated as it exists on the date of the approval, and a notice of any change in the material will be published in the **Federal Register.** All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945. Also, this material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *ICC.* International Code Council, 500 New Jersey Avenue, NW., 6th Floor, Washington, DC 20001, 1–888–ICC–SAFE or (202) 370–1800, or go to *http://www.iccsafe.org/Pages/default.aspx.*

(1) ICC International Energy Conservation Code (IECC), 2004 Supplement Edition (''IECC 2004''), January 2005, ISBN 7801S04, IBR approved for §§ 435.2, 435.4, 435.5;

(2) ICC International Energy Conservation Code (IECC), 2009 Edition (''IECC 2009''), January 2009, ISBN 978–1–58001–742–8, IBR approved for §§ 435.2, 435.4, 435.5.

■ 10. In § 435.4, revise paragraph (a) to read as follows:

§ 435.4 Energy efficiency performance standard.

(a)(1)All Federal agencies shall design new Federal buildings that are low-rise residential buildings, for which design for construction began on or after January 3, 2007, but before August 10, 2012, to:

(i) Meet the IECC 2004 (incorporated by reference, see § 435.3), and

(ii) If life-cycle cost-effective, achieve energy consumption levels, calculated consistent with paragraph (b) of this section, that are at least 30 percent below the levels of the IECC Baseline Building 2004.

(2) All Federal agencies shall design new Federal buildings that are low-rise residential buildings, for which design for construction began on or after August 10, 2012, to:

(i) Meet the IECC 2009 (incorporated by reference, see § 435.3), and

(ii) If life-cycle cost-effective, achieve energy consumption levels, calculated consistent with paragraph (b) of this section, that are at least 30 percent below the levels of the IECC Baseline Building 2009.

* * * * *

■ 11. Revise § 435.5 to read as follows:

§ 435.5 Performance level determination.

(a) For Federal buildings for which design for construction began on or after January 3, 2007, but before August 10, 2012, each Federal agency shall determine energy consumption levels for both the IECC Baseline Building 2004 and proposed building by using the Simulated Performance Alternative found in section 404 of the IECC 2004 (incorporated by reference, see § 435.3).

(b) For Federal buildings for which design for construction began on or after August 10, 2012, each Federal agency shall determine energy consumption levels for both the IECC Baseline Building 2009 and proposed building by using the Simulated Performance Alternative found in section 405 of the IECC 2009 (incorporated by reference, see § 435.3).

[FR Doc. 2011–20024 Filed 8–9–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1171; Airspace Docket No. 10–ASW–16]

Amendment of Class D Airspace; Corpus Christi, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the geographic coordinates in the regulatory text of a final rule that was published in the **Federal Register** June 2, 2011,

amending Class D airspace at Cabaniss Navy Outlying Field (NOLF), Corpus Christi, TX.

DATES: *Effective date:* 0901 UTC August 25, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On June 2, 2011, the FAA published in the **Federal Register** a final rule amending Class D airspace at Cabaniss NOLF, Corpus Christi, TX (76 FR 31821, Docket No. FAA–2010–1171). Subsequent to publication, an error was discovered in the latitude coordinates listed in the regulatory text. This action corrects that error. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the latitude coordinates listed in the regulatory text for the Class D airspace area at Cabaniss NOLF, Corpus Christi, TX, as published in the **Federal Register** June 2, 2010 (76 FR 31821), (FR Doc. 2011–13559), are corrected as follows:

ASW TX D Corpus Christi, TX [Corrected]

Cabaniss NOLF, TX

On page 31822, column 1, line 49 of the regulatory text, remove 'lat. 27°38′15″ N.,' and insert 'lat. 27°38′16″ N.'; and on line 50 remove 'lat. 27°41′30″ N.,' and insert 'lat. 27°41′22″ N.'

Issued in Fort Worth, Texas, on August 2, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–20303 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 Chapter II

[CPSC Docket No. CPSC–2011–0052]

Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies To Assess Conformity With the Limits on Phthalates in Children's Toys and Child Care Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Requirements.

SUMMARY: The Consumer Product Safety Commission (CPSC, Commission, or we) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the phthalates limits in section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (CPSA).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with phthalates limits when tested in accordance with CPSC–CH–C1001–09.3, *Standard Operating Procedure for Determination of Phthalates*, and GB/T 22048–2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic* are effective August 10, 2011.

Submit comment by September 9, 2011. Comments on this notice should be captioned ''Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with the Limits on Phthalates in Children's Toys and Child Care Articles.''

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0052, by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions: Submit written submissions in the following ways:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Carol Afflerbach, Compliance Officer, Office of Compliance and Field Investigations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *cafflerbach@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies (also known as ''testing laboratories'' or ''laboratories'') to assess children's products for conformity with ''other children's product safety rules.'' [1] Section 14(f)(1) of the CPSA defines ''children's product safety rule'' as ''a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.'' Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after

[1] The Commission voted 5–0 to publish this notice of requirements, with amendments, in the **Federal Register**. Chairman Inez M. Tenenbaum and Commissioners Thomas H. Moore and Robert S. Adler filed a joint statement regarding the vote. Commissioners Nancy A. Nord and Anne M. Northup filed individual statements. The statements may be viewed at *http://www.cpsc.gov/pr/statements/html.*

the **Federal Register** publication date of a notice of the requirements for accreditation, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with the applicable CPSC requirements (see, *e.g.*, section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the following test methods:

- CPSC–CH–C1001–09.3, *Standard Operating Procedure for Determination of Phthalates*, issued on April 1, 2010 (''CPSC Test Method''). This is the most recent version of the test method, and it can be downloaded from the CPSC Web site at *http://www.cpsc.gov/about/cpsia/CPSC-CH-C1001-09.3.pdf;* and/or
- GB/T 22048–2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic*, issued on June 16, 2008 (''Chinese Test Method'').

The Commission is recognizing limited circumstances in which it will accept certifications based on product testing conducted before the publication of this notice of requirements. The details regarding those limited circumstances can be found in part VI of this document below.

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with ''all other children's product safety rules,'' this notice of requirements is limited to test methods CPSC–CH–C1001–09.3, *Standard Operating Procedure for Determination of Phthalates*, and GB/T 22048–2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic*. The CPSC acknowledges that the test methods for determining phthalates content are not, by themselves, rules that are codified in the Code of Federal Regulations. However, section 108(d) of the CPSIA considers the phthalates content limits to be ''consumer product safety standards'' under the Consumer Product Safety Act. Section 14(a)(3)(B)(vi) of the CPSA directs the Commission to publish notices of requirements for the accreditation of third party conformity assessment bodies to assess conformity with ''other children's product safety rules,'' and section 14(f)(1) of the CPSA defines a ''children's product safety rule,'' in part, as ''a consumer product safety rule under [the CPSA].'' Section 3(a)(6) of the CPSA, in turn, defines a ''consumer product safety rule'' as ''a consumer products safety standard described in section 7(a) [of the CPSA] * * * or a rule under this Chapter declaring a consumer product a banned hazardous product.'' Accordingly, because the phthalates content limits are ''consumer product safety standards'' under the CPSA, it follows that they are also ''consumer product safety rules'' under section 3(a)(6) of the CPSA and, in turn, ''children's product safety rules'' under section 14(f)(1) of the CPSA. Thus, the phthalates content limits are ''children's product safety rules'' for which a notice of requirements for accreditation of third party conformity assessment bodies must be published. In addition, because the test methods would be used to assess conformity with the phthalates limits, it is appropriate for the notice of requirements to apply to the CPSC Test Method and the Chinese Test Method.

The CPSC also recognizes that section 14(a)(3)(B)(vi) of the CPSA is captioned: ''All Other Children's Product Safety Rules,'' but the body of the statutory requirement refers only to ''other children's product safety rules.'' Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed to require a notice of requirements for ''all'' other children's product safety rules, rather than a notice of requirements for ''some'' or ''certain'' children's product safety rules. However, whether a particular rule represents a ''children's product safety rule'' may be subject to interpretation. Commission staff is continuing to evaluate which rules, regulations, standards, or bans are ''children's product safety rules.'' The CPSC intends to issue additional notices of requirements for other rules which the Commission determines to be ''children's product safety rules.''

This notice of requirements applies to all third party conformity assessment bodies, as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) ''firewalled'' conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for ''firewalled'' conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories.'' The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC–MRA), and the scope of the accreditation must include testing for any of the test methods identified earlier in this document for which the third party conformity assessment body seeks to be accredited.

(A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum, ''Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR part 1501 (Small Parts Regulations),'' dated November 2008, and available on the CPSC's Web site at: *http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf*).

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site at: *http://www.cpsc.gov/about/cpsia/labaccred.html*.

The Commission stayed the enforcement of certain provisions of section 14(a) of the CPSA in a notice published in the **Federal Register** on February 9, 2009 (74 FR 6396); the stay applied to testing and certification of various products, including the phthalates limits of section 108 of the CPSIA. On December 28, 2009, the Commission published a notice in the **Federal Register** (74 FR 68588), revising the terms of the stay. One section of the December 28, 2009, notice addressed: ''Consumer Products or Children's Products Where the Commission Is Continuing the Stay of Enforcement Until Further Notice,'' due to factors such as pending rulemaking proceedings affecting the product or the

absence of a notice of requirements. The phthalates content testing and certification requirements for children's toys and child care articles were included in that section of the December 28, 2009 notice. The absence of a notice of requirements prevented the lifting of the stay in the December 28, 2009 notice with regard to testing and certifications of children's toys and child care articles for phthalates content. On February 8, 2011, the Commission published a notice in the **Federal Register** (76 FR 6765), continuing the stay of enforcement for testing and certification of children's products for which a notice of requirements for accreditation of laboratories had not yet been published.

The phthalates content testing and certification requirements for children's toys and child care articles were mentioned specifically as an example of a provision for which the stay would continue, pending publication of the notice of requirements. Thus, publication of this notice of requirements would have had the effect of lifting the stay on testing and certification requirements for phthalates content in children's toys and child care articles; however, on July 27, 2011, the Commission voted to stay enforcement of the testing and certification requirements of section 14 of the CPSA with respect to toys and child care articles subject to the phthalates content limits until December 31, 2011.

Accordingly, the Commission will enforce third party testing and certification requirements for products subject to the phthalates content limits if such products are manufactured on or after January 1, 2012. (Under the CPSA, the term ''manufacturer'' includes anyone who manufactures or imports a product.)

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (see section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G))).

II. Testing & Certification to Phthalates Limits—Prior Guidance Remains in Effect

The Commission approved a ''Statement of Policy: Testing of Component Parts with Respect to Section 108 of the Consumer Product Safety Improvement Act'' on August 7, 2009. On August 17, 2009, a Notice of Availability regarding the Statement of Policy was published in the **Federal Register** (74 FR 41400). The Statement of Policy can be viewed and downloaded from the CPSC Web site at: *http://www.cpsc.gov/about/cpsia/componenttestingpolicy.pdf*. In brief, we believe that only those plastic parts or other product parts which could conceivably contain phthalates (''plasticized component parts'') should be tested for phthalates. We consider it to be unnecessary to test and certify materials that are known not to contain phthalates or to certify that phthalates are absent from materials that are known not to contain phthalates.[2] In addition, we believe that when testing covered products, the assessment of the concentration of phthalates is to be based on testing of the plasticized component parts, rather than testing of the entire product, to avoid dilution of the concentrations of phthalates that can occur when the entire product is considered. The Statement of Policy remains in effect until further notice (except that the CPSC Test Method referenced in the Statement of Policy, CPSC–CH–C1001–09.2, has been superseded by CPSC–CH–C1001–09.3 as outlined in part VI of this document below).

The Commission voted to publish a ''Draft Guidance Regarding Which Children's Products are Subject to the Requirements of CPSIA Section 108'' on February 13, 2009. On February 23, 2009, the staff guidance was published in the **Federal Register** (74 FR 8058). This staff guidance can be viewed and downloaded from the CPSC Web site at: *http://www.cpsc.gov/businfo/frnotices/fr09/draftphthalatesguidance.pdf*. The Commission may choose to update this staff guidance or initiate a formal rulemaking concerning the topics addressed by the guidance after receipt of the Chronic Hazard Advisory Panel report required by section 108(b)(2)(C) of the CPSIA. Until such time, this staff guidance remains in effect (except that the CPSC Test Method referenced in the guidance, CPSC–CH–C1001–09.1, has been superseded by CPSC–CH–C1001–09.3 as outlined in part VI of this document below).

Answers to frequently asked questions that provide guidance concerning the requirements of section 108 of the CPSIA can be viewed on the CPSC Web site at: *http://www.cpsc.gov/about/cpsia/sect108.html#faqs*. The Commission intends for this guidance to be useful and therefore the materials on this Web page may be modified periodically in the future. In order to receive automatic notification of any such updates, interested parties may sign up for the CPSIA email subscription list at: *https://www.cpsc.gov/about/cpsia/cpsialist.aspx*. The Commission notes that the phthalate content limits in section 108 of the CPSIA are statutory requirements and we may always take action with regard to products defined in this section of the statute that exceed those limits.

[2] Untreated/unfinished wood, metal, natural fibers, natural latex and mineral products are not expected to inherently contain phthalates and need not be tested or certified provided that these materials have neither been treated or adulterated with the addition of materials that could result in the addition of phthalates into the product or material.

III. Responses to Comments Received on the CPSC Testing Method

The Commission requested comments regarding the Statement in the Notice of Availability published in the **Federal Register** (74 FR 41400). We received several comments on the CPSC Test Method. We describe and respond to the comments in this section of the document. To make it easier to identify the comments and our responses, the word ''Comment,'' in parentheses, will appear before the comment's description, and the word ''Response,'' in parentheses, will appear before our response. We also have numbered each comment to help distinguish between different topics. The number assigned to each comment is for organizational purposes only and does not signify the comment's value, or importance, or the order in which it was received.

(*Comment 1*)—Some commenters questioned the necessity to run the test in triplicate. Other test multiples from two to five were suggested. Some commenters asked whether the sample to be tested always needed to be ground to a powder. A commenter asked about the proper cleaning protocol of the cryogenic mill.

(*Response 1*)—We have examined all suggestions and comments pertaining to the CPSC Test Method and have updated our test method to address these issues (CPSC–CH–C1001–09.3). We adjusted the method to allow the third party conformity assessment body to choose an appropriate quality assurance program; thus, the third party conformity assessment body will determine the number of replicates to be tested. The CPSC Test Method allows, but does not require, third party conformity assessment bodies to pulverize the sample. Cryogenic mill equipment should be cleaned as thoroughly as any other laboratory equipment that comes into contact with a sample.

(*Comment 2*)—One commenter suggested that the official Chinese test method, GB/T 22048–2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl*

Chloride Plastic, should be added to the lists of acceptable extraction and analysis methods. The commenter also suggested that each plasticized component part should be cut into pieces no larger than 2 mm prior to the extraction step.

(*Response 2*)—We have reviewed the test method GB/T 22048–2008 and determined that it is an acceptable test method for inclusion in this notice of requirements. With regard to the 2 mm maximum size of pieces, we agree with this comment and have incorporated the dimension into the current edition of the CPSC Test Method (CPSC–CH–C1001–09.3).

(*Comment 3*)—Another commenter suggested that the CPSC Test Method include a description of the limit of detection (LOD) and limit of quantitation (LOQ). The commenter added that, on the last page of CPSC–CH–C1001–09.2, there appears to be an error in the DEHP calculation. Under column C, measured DEHP concentration by GC–MSW is 200 μg/ml. In the final calculation column, 200 μg/ml is mistakenly cited as 20 μg/ml.

(*Response 3*)—Detection and quantitation limits have not been outlined specifically at this point. Third party conformity assessment bodies should follow their own internal quality assurance program. These limits may be introduced in the future, following further validation and round robin studies. The DEHP calculation included a typographical error that was corrected for the current edition of the test method (CPSC–CH–C1001–09.3).

(*Comment 4*)—One commenter stated that grinding the sample into a powder is time-consuming, adds additional expense to the testing methods, and could introduce the possibility of significant interlaboratory variability.

(*Response 4*)—Grinding the sample into a powder is no longer required in the CPSC Test Method; however, third party conformity assessment bodies may continue to do so, if they wish.

(*Comment 5*)—One commenter asked how the CPSC Test Method prevents interferences that can lead to a false positive for the phthalates of interest. The commenter also asked if the detection method could be revised.

(*Response 5*)—We have updated the CPSC Test Method (to CPSC–CH–C1001–09.3) to include a vigorous qualitative assessment by trained staff to avoid false positives. Such steps include: Retention time matching with known standards and full-scan mass spectrum analysis. We will continue to consider new methods that could simplify or improve the analysis.

(*Comment 6*)—One commenter pointed out typographical inconsistencies found within the text of the method. Additionally, the commenter asked: What is the minimum signal-to-noise ratio required, and what are the reproducibility and detection limits of the method?

(*Response 6*)—We have corrected the typographical errors that might have caused confusion. Signal-to-noise, detection limits, and reproducibility requirements have not been outlined specifically at this point. Third party conformity assessment bodies should follow their own internal quality assurance program. Testing requirements may be adjusted following further validation and round robin studies.

(*Comment 7*)—One commenter asked if the chromatography was optimized.

(*Response 7*)—The gas chromatography parameters outlined have been successful at providing adequate separation while minimizing sampling time. However, due to the nature of DINP and DIDP, they will not completely separate chromatographically. DINP and DIDP are actually a mixture of compounds; DINP and DIDP contain some of the same phthalate species, leading to an overlap. We recommend following the selection monitoring analysis scheme outlined in the CPSC Test Method to quantify these compounds for instances when they are both present.

(*Comment 8*)—One commenter suggested that we create a flexible correlative policy that permits use of several methods suitable for the routine identification and measurement of total phthalate concentration, such as ASTM D7083–04, the Canada Product Safety Bureau method, the European Toy Safety Directive method, and GB/T 22048–2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic.*

(*Response 8*)—The current edition of the CPSC Test Method (CPSC–CH–C1001–09.3) allows alternative test methods. Additionally, any combination of the approved extraction and analysis methods listed may be used. We have included GB/T 22048–2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic,* as an additional test method in this notice of requirements. We have not included ASTM D7083–04 as an alternative detection method due to the lack of selectivity from using a flame ionization detector; this method may lead to false positives. We will review other suggested methods and may include them as alternatives in future revisions of the test method.

IV. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children's products for conformity with the test methods identified earlier in part I of this document, it must be accredited by an ILAC–MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at: *http://ilac.org/membersbycategory.html.* The accreditation must be to ISO Standard ISO/IEC 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories,'' and the scope of the accreditation must expressly include testing to the test method CPSC–CH–C1001–09.3, *Standard Operating Procedure for Determination of Phthalates,* and/or to the test method GB/T 22048–2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic.* A true copy, in English, of the accreditation and scope documents demonstrating compliance with these requirements must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts IV.B and IV.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing children's toys and child care articles for phthalates content to support certification by the manufacturer or private labeler of compliance with the test method(s) identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part IV.A of this document above, firewalled conformity assessment bodies seeking accredited status must submit to the Commission copies, in English, of their training documents, showing how employees are trained to notify the

Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of 10 percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body. The Commission's order must also find that accrediting the firewalled conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part IV.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part IV.A of this document above and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

V. How does a third party conformity assessment body apply for acceptance of its accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at: *http://www.cpsc.gov/about/cpsia/labaccred.html.* The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC–MRA accreditation certificate and scope statement, and firewalled third party conformity assessment body training document(s), if relevant.

CPSC staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are completed satisfactorily, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at *http://www.cpsc.gov/about/cpsia/labaccred.html.* In the case of a firewalled conformity assessment body seeking accredited status, when staff's review is complete, staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that may ultimately seek acceptance as a firewalled third party conformity assessment body also can initially request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body will be added to the CPSC's list of accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may begin testing children's products to support certification of compliance with the phthalates content limits for which it has been accredited.

VI. Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing to CPSC–CH–C1001–09, Standard Operating Procedure for Determination of Phthalates, and/or GB/T 22048–2008, Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic, Prior to the Effective Date

For certifications of children's toy or child care articles subject to the phthalates content limits in section 108 of the CPSIA, the Commission will allow certifications to be based on prior testing under certain conditions. Firms that elect to voluntarily have the phthalates content of children's toys and child care articles tested by a third party conformity assessment body, using either the CPSC Test Method or the Chinese Test Method, before January 1, 2012, will not need to have those products retested. The Commission's acceptance of certifications based on prior testing under certain conditions should prevent testing backlogs at accredited third party conformity assessment bodies, making it less likely that the Commission will have to postpone the effective date for certification.

The Commission will accept a certificate of compliance to the phthalates limits in section 108 of the CPSIA based on testing performed by an accredited third party conformity assessment body (including a government-owned or -controlled conformity assessment body, and a firewalled conformity assessment body) if:

- At the time of product testing, the product was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an ILAC–MRA member at the time of the test. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the

Commission has accredited by order at or before the time the product was tested, even if the order did not include the test methods specified in this notice. If the third party conformity assessment body has not been accredited by a Commission order as a firewalled conformity assessment body, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body;

• For tests conducted using the CPSC Test Method, the test was conducted on or after July 27, 2009. The Commission has chosen July 27, 2009, because it is the date the Commission posted a test method for testing component parts for phthalates on the Commission Web site: (*http://www.cpsc.gov/about/cpsia/CPSC-CH-C1001-09.2.pdf*). The test method was updated on April 1, 2010, to the current method (*http://www.cpsc.gov/about/cpsia/CPSC-CH-C1001-09.3.pdf.*). The Commission will accept phthalates content certifications for products tested before January 1, 2012, if the product was tested using either CPSC–CH–C1001–09.2 or CPSC–CH–C1001–09.3. The Commission acknowledges that, on March 3, 2009, it released a test method that involved testing the entire product (*http://www.cpsc.gov/about/cpsia/CPSC-CH-C1001-09.1.pdf*) (''March 2009 test method''). The Commission will not accept phthalates content certifications for products tested using the March 2009 test method (CPSC–CH–C1001–09.1). The Commission considers testing the entire product to be less protective of children because mouthable component parts with high concentrations of phthalates in products with large quantities of nonplasticized parts would be able to pass the test because the total mass of the product would dilute the overall phthalate measure.

• For tests conducted using the Chinese Test Method, the test was conducted on or after June 18, 2008. The Commission has chosen June 18, 2008, because that is the date that the Chinese Test Method was issued.

• The third party conformity assessment body's application for accreditation is accepted by CPSC by the mandatory effective date, as established by the Commission;

• The accreditation scope in the application for accreditation expressly includes one or both of the acceptable test methods identified earlier in part I of this document;

• The test results show compliance with the applicable current standards; and

• The third party conformity assessment body's accreditation and inclusion of one or both of the test methods (identified earlier in part I of this document) in its scope remain in effect through the effective date for mandatory third party testing and manufacturer certification for the subject products' respective standards.

Dated: July 29, 2011.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–19678 Filed 8–9–11; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 35

RIN 3038–AD21

Agricultural Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is charged with proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The Dodd-Frank Act provides that swaps in an agricultural commodity (as defined by the Commission) are prohibited unless entered into pursuant to a rule, regulation or order of the Commission adopted pursuant to certain provisions of the Commodity Exchange Act (''CEA'' or ''Act''). On February 3, 2011, the Commission requested comment on a set of proposed rules that would, among other things, implement regulations whereby swaps in agricultural commodities may transact subject to the same rules as all other swaps. The proposed rules for swaps in an agricultural commodity would repeal and replace the Commission's current regulations concerning the exemption of swap agreements. After reviewing the comments submitted in response to the proposed rules, the Commission has determined to issue these final rules for swaps in an agricultural commodity in the form as originally proposed. The February 3, 2011, proposed rules also included provisions that would substantially amend the Commission's regulations regarding commodity option transactions. However, in this final rule the Commission is only issuing the rules for swaps in an agricultural commodity. The proposed rules for commodity option transactions will be addressed at a later date.

DATES: *Effective Date*—December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel, (202) 418–5041, *dheitman@cftc.gov,* or Ryne Miller, Attorney Advisor, (202) 418–5921, *rmiller@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1] Title VII of the Dodd-Frank Act[2] amended the CEA[3] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

B. Proposed Agricultural Swaps Rules

Section 723(c)(3) of the Dodd-Frank Act provides that swaps in an agricultural commodity (as defined by the Commission)[4] are prohibited unless entered into pursuant to a rule, regulation or order of the Commission adopted pursuant to CEA section 4(c).

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[2] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[3] 7 U.S.C. 1 *et seq.*

[4] As discussed below, in accordance with the mandate of the Dodd-Frank Act, the Commission recently promulgated a final rule defining the term ''agricultural commodity.'' *See* 76 FR 41048, July 13, 2011.

Further, section 733 of the Dodd-Frank Act, new CEA section 5h(b)(2), provides that a swap execution facility (''SEF'') may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

As a result of the Dodd-Frank changes, on February 3, 2011, the Commission published in the **Federal Register** a notice of proposed rulemaking to withdraw current part 35 of the Commission's regulations [5] and replace it with a new part 35 that would essentially permit the transaction of swaps in an agricultural commodity (or, ''agricultural swaps'') [6] subject to the same rules and regulations applicable to any other swap (the ''NPRM'').[7] The NPRM was preceded by an advanced notice of proposed rulemaking wherein the Commission sought general comment on the agricultural swaps provisions in the Dodd-Frank Act (the ''ANPRM'').[8] The NPRM included an overview and summary of the comments received on the ANPRM, which generally favored treating agricultural swaps the same as every other swap.

C. Proposed Commodity Options Rules

Because the Dodd-Frank Act statutory definition of a swap includes commodity options (other than options on futures),[9] the NPRM also included proposed provisions that would substantially amend the Commission's regulations regarding commodity option transactions. At this time, the Commission is only finalizing the rules for agricultural swaps in amended part 35 of the Commission's regulations. The proposed rules for commodity options—including proposed amendments to parts 3, 32, and 33—will be addressed at a later date.

D. Final Agricultural Swaps Rules

Accordingly, the preamble to this final rule reviews the statutory and regulatory framework governing agricultural swaps, as discussed in the NPRM,[10] provides an overview and summary of the comments received on the agricultural swaps rules proposed in the NPRM, and includes an explanation of the final rules issued herein. This preamble also includes a discussion of CEA section 4(c), the primary statutory authority for the agricultural swaps rules,[11] and a detailed discussion of the costs and benefits of the final rule, along with a review of those comments specifically addressing the costs and benefits of the proposed agricultural swaps rules.

II. Agricultural Swaps Background

A. Pre Dodd-Frank Swaps Provisions

As explained in the NPRM, beginning in 2000, bilateral swaps between certain sophisticated counterparties were generally exempted from the Commission's jurisdiction pursuant to pre Dodd-Frank CEA section 2(g),[12] which was added to the CEA by the Commodity Futures Modernization Act of 2000 (''CFMA'').[13] However, pre Dodd-Frank section 2(g) specifically excluded an ''agreement, contract, or transaction'' in an ''agricultural commodity'' from the CFMA swaps exemption.[14] While the term ''agricultural commodity'' is not specifically defined in the Act, the Commission recently adopted a final rule defining ''agricultural commodity.'' [15]

The effect of the pre Dodd-Frank CEA sections explicitly excluding agricultural commodities from the CFMA statutory swaps exemptions and exclusions was that swaps involving exempt and excluded commodities were allowed to transact largely outside of the Commission's jurisdiction or oversight, while swaps in agricultural commodities had to continue to rely on authority found in pre-CFMA law. As discussed in greater detail below, that pre-CFMA authority was found in part 35 of the Commission's regulations.

Part 35 originally provided a broad exemption for certain swap agreements and applied to swaps in all commodities.[16] After the CFMA amendments to the CEA, which statutorily exempted swaps on ''exempt'' and ''excluded'' commodities from virtually all of the Commission's jurisdiction, part 35 remained relevant only for agricultural swaps. With the exception of three outstanding exemptive orders related to cleared agricultural basis and calendar swaps [17]

[5] 17 CFR part 35.

[6] When this notice refers to ''agricultural swaps,'' it is referring to swaps in an agricultural commodity, as identified in section 723(c)(3) of the Dodd-Frank Act.

[7] *See* Commodity Options and Agricultural Swaps, 76 FR 6095, February 3, 2011.

[8] *See* Agricultural Swaps, 75 FR 59666, Sept. 28, 2010.

[9] Section 721 of the Dodd-Frank Act adds new section 1a(47) to the CEA, defining ''swap'' to include not only ''any agreement, contract, or transaction commonly known as,'' among other things, ''an agricultural swap'' or ''a commodity swap,'' but also ''[an] option of any kind that is for the purchase or sale, or based on the value, of * * * commodities * * *.'' However, the NPRM notes that the new swap definition did not include options on futures, options on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 and the Securities Exchange Act of 1934 (*see* new CEA section 1a(47)(B)(iii)), and foreign currency options entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (*see* new CEA section 1a(47)(B)(iv)).

[10] *See* NPRM, 76 FR at 6096 at 6096–97, Feb. 3, 2011.

[11] In addition to 4(c), these final rules are also being adopted pursuant to the Commission's authority under CEA section 4c(b)—just as original part 35 was adopted pursuant to both CEA section 4(c) and 4c(b).

[12] Pre Dodd-Frank section 2(g) provided:

No provision of this Act (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)) shall apply to or govern any agreement, contract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

(1) Entered into only between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction;

(2) subject to individual negotiation by the parties; and

(3) not executed or traded on a trading facility.

Pre Dodd-Frank CEA section 2(g). Note that section 2(g) is among those sections of the CEA that were repealed by the Dodd-Frank Act, effective July 16, 2011.

[13] Pre Dodd-Frank CEA section 2(g) was added to the CEA as section 105(b) of the CFMA, enacted as Appendix E to Public Law 106–554.

[14] Notably, pre Dodd-Frank CEA section 2(g) is not the only statutory provision added by the CFMA that excluded or exempted bilateral swaps between eligible contract participants from the Commission's jurisdiction. Pre Dodd-Frank CEA section 2(d)(1) excluded any such bilateral ''agreement, contract, or transaction'' in excluded commodities from Commission jurisdiction, while pre Dodd-Frank CEA section 2(h)(1) created a similar exemption for a ''contract, agreement or transaction'' in exempt commodities. Both sections 2(d)(1) and 2(h)(1) were also among the CEA provisions repealed by the Dodd-Frank Act, effective July 16, 2011.

[15] *See* Agricultural Commodity Definition, 76 FR 41048, July 13, 2011.

[16] Part 35 provides eligible swap participants (as defined in § 35.1(b)(2)) with a general exemption from the CEA for a swap that is not part of a fungible class of agreements that are standardized as to their material economic terms, where the creditworthiness of each counterparty is a material consideration in entering into or determining the terms of the swap, and the swap is not entered into and traded on or through a multilateral transaction execution facility. *See* § 35.2.

[17] Part 35, at § 35.2(d), also provides that ''any person may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B) [liability of principal for act of agent]) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited to, the applicability of other regulatory regimes.'' *See* 17 CFR 35.2(d). The Commission has granted three such exemptions, which have in each instance been styled as exemptive orders pursuant to CEA section 4(c). *See*

1. Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act (a) Permitting Eligible Swap Participants To Submit for Clearing and ICE Clear U.S., Inc. and Futures Commission Merchants To Clear Certain Over-The-Counter Agricultural Swaps and (b) Determining Certain Floor Brokers and Traders To Be Eligible Swap Participants; and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Certain Customer Positions in the Foregoing Swaps and Associated

(which orders exempt certain swaps transactions from part 35's non-fungibility and counterparty creditworthiness requirements), part 35 is the sole existing authority under which market participants may transact agricultural swaps that are not options.[18]

B. Dodd-Frank Swaps Provisions

i. Non-Agricultural Swaps

As explained in the introduction, the Dodd-Frank Act amended the CEA to remove the CFMA swaps exemptions and exclusions and to create a new regulatory regime for swaps. Under the CEA, as amended by the Dodd-Frank Act, only eligible contract participants (''ECPs'') [19] may enter into a swap, unless such swap is entered into on a designated contract market (''DCM''),[20] in which case any person may enter into the swap.[21]

New CEA section 2(h), as added by section 723(a)(3) of the Dodd-Frank Act, establishes a clearing requirement for swaps. Under that subsection, the Commission would determine, based on factors listed in the statute, whether a swap, or a group, category, type, or class of swaps, should be required to be cleared. A swap that is required to be cleared must be executed on a DCM or a SEF,[22] if a DCM or SEF makes the swap available for trading. Swaps that are not required to be cleared may be executed bilaterally.

Section 731 of the Dodd-Frank Act adds a new section 4s to the CEA that provides for the registration and regulation of swap dealers and major swap participants.[23] The new requirements for swap dealers and major swap participants include, in part, capital and margin requirements, business conduct standards, and reporting, recordkeeping, and documentation requirements.

Section 737 of the Dodd-Frank Act amends current CEA section 4a regarding position limits. Under the Dodd-Frank provisions and amended CEA section 4a, the Commission is directed to establish position limits as appropriate for futures and options traded on or subject to the rules of a designated contract market, and swaps that are economically equivalent to such futures and exchange-traded options for both exempt and agricultural commodities.

ii. Agricultural Swaps

Notwithstanding the new swaps regime in the Dodd-Frank Act, section 723(c)(3) of Dodd-Frank prohibits swaps in an ''agricultural commodity'' (as defined by the Commission) [24] unless the swap is entered into pursuant to an exemption granted under CEA section 4(c). The requirements of section 4(c) are discussed in greater detail, below.[25]

Dodd-Frank section 723(c)(3)(B) includes a ''grandfather'' clause providing that any rule, regulation, or order regarding agricultural swaps that was issued pursuant to the Commission's section 4(c) exemptive authority, and that was in effect on the date of enactment of the Dodd-Frank Act, would continue to be permitted under such terms and conditions as the Commission may prescribe. Such rules, regulations or orders include part 35 with respect to agricultural swaps and the agricultural basis and calendar swaps noted above.

In addition to the provisions in section 723(c)(3), section 733 of the Dodd-Frank Act, new CEA section 5h(b), provides that a SEF may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

III. Agricultural Swaps Proposal in the NPRM

The NPRM proposed repealing existing part 35 in its entirety and replacing it with the following:

PART 35—SWAPS IN AN AGRICULTURAL COMMODITY (AGRICULTURAL SWAPS)

§ 35.1 Agricultural swaps, generally.

(a) Any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a swap in an agricultural commodity subject to all provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap; and

(b) In addition to paragraph (a) of this section, any transaction in interstate commerce that is a swap in an agricultural commodity may be transacted on a swap execution facility, designated contract market, or otherwise in accordance with all provisions of the Act, including any Commission rule, regulation, or order thereunder, applicable to any other swap eligible to be transacted on a swap execution facility, designated contract market, or otherwise.

In the NPRM, the Commission requested specific input on the following questions related to the agricultural swaps proposal:

1. Generally, would the proposed rulemaking provide an appropriate regulatory framework for the transacting of agricultural swaps?

2. Does the proposal for new part 35 appropriately address all outstanding issues as they relate to the transaction of swaps in an agricultural commodity?

3. By limiting participation in agricultural swaps that are transacted outside of a DCM to persons that meet the CEA definition of an eligible

Property To Be Commingled With Other Property Held in Segregated Accounts, 73 FR 77015, Dec. 18, 2008;

2. Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Chicago Mercantile Exchange to Clear Certain Over-the-Counter Agricultural Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Contracts and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 74 FR 12316, Mar. 24, 2009; and

3. Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Kansas City Board of Trade Clearing Corporation To Clear Over-the-Counter Wheat Calendar Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Swaps and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 75 FR 34983, June 21, 2010.

[18] Issues related to options on agricultural commodities were reviewed in detail in the NPRM, 76 FR 6095 at 6097–98, Feb. 3, 2011. As noted above, final rules regarding the post Dodd-Frank treatment of commodity options will be addressed by the Commission at a later date.

[19] ''Eligible contract participant'' is defined in CEA section 1a(18). A proposal to further define the term is also currently pending. *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 75 FR 80174, Dec. 21, 2010 (joint rulemaking with Securities and Exchange Commission (''SEC''). The comment period closed February 22, 2011.

[20] A designated contract market is a board of trade designated as a contract market under CEA section 5.

[21] *See* new CEA section 2(e) as added by section 723(a)(2) of the Dodd-Frank Act.

[22] The requirements for SEFs are set forth in new CEA section 5h.

[23] ''Swap dealer'' is defined in new CEA section 1a(49), as added by section 721(a)(21) of the Dodd-Frank Act. ''Major swap participant'' is defined in new CEA section 1a(33), as added by section 721(a)(16) of the Dodd-Frank Act.

[24] *See* the recently adopted definition of agricultural commodity at 76 FR 41048, July 13, 2011.

[25] Generally speaking, section 4(c) provides that, in order to grant an exemption, the Commission must determine that: (1) The exemption would be consistent with the public interest and the purposes of the CEA; (2) any agreement, contract, or transaction affected by the exemption would be entered into by ''appropriate persons'' as defined in section 4(c); and (3) any agreement, contract, or transaction affected by the exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.

contract participant and permitting non-ECPs to enter into a swap on a DCM, has the proposed rulemaking satisfied the requirements of CEA section 4(c)(3), which requires that any agreements, contracts or transactions exempted under this provision should be limited to those ''entered into solely between appropriate persons?''

4. Do the proposals omit or fail to appropriately consider any other areas of concern regarding agricultural swaps?

IV. Summary of Comments

A. General Overview

Thirty-one formal comment letters substantively addressed the NPRM,[26] representing a broad range of interests, including agricultural producers, merchants, swap dealers, commodity funds, futures industry organizations, academics/think tanks, a US government agency, and private individuals. The comments addressing the agricultural swaps proposal came from Gavilon Group, LLC (''Gavilon''), a feed manufacturer; the Agricultural Commodity Swaps Working Group (a/k/a ''Commodity Options and Agricultural Swaps Working Group''), which is comprised of financial institutions, including Barclays Capital, Citigroup, Credit Suisse Securities (USA) LLC, JPMorgan Chase & Co., Morgan Stanley, and Wells Fargo & Company, that provide risk management and investment products to agricultural end-users; Chris Barnard, an individual; Dairy Farmers of America (''DFA''); the Independent Bakers Association, which represents over 200 small to medium sized, mostly family owned wholesale bakeries and allied industry trades; NextEra Energy Resources, LLC, owners of electricity generation assets; CME Group, Inc. (''CME''); Futures Industry Association and International Swaps and Derivatives Association (''FIA & ISDA''); National Grain and Feed Association (''NGFA''); Professor Michael Greenberger, University of Maryland School of Law, referencing his comment letter submitted for the agricultural commodity definition notice of proposed rulemaking; National Council of Farmer Cooperatives (''NCFC''); Commodity Markets Council (''CMC''), a trade association made up of U.S. futures exchanges and commercial end-users of futures and derivatives markets; and National Milk Producers Federation (''NMPF''). In addition, the NPRM received several comments that only addressed options,[27] and several comments requesting exemptive relief for the transition period following the effective date of the Dodd-Frank Act.[28]

B. Comments on the Agricultural Swaps Proposal

Just as with the comments received on the ANPRM, the vast majority of commenters who expressed an opinion on the topic supported treating agricultural swaps under the same regulatory scheme as other categories of swaps, as the Commission proposed. The following statements are representative of this sentiment:

> The use of agricultural swaps has been constrained relative to other swaps by virtue of being subject to CFTC regulatory requirements, while other swaps have been exempted from CFTC oversight. As the Commission's proposed rule notes, the passage of the Dodd-Frank Act changes the regulatory structure for all swaps and institutes a number of safeguards, including the limitation that only eligible contract participants (ECPs) may engage in swaps unless entered into on a designated contract market; mandatory clearing requirements for swaps; and registration, reporting, business standards, and capital and margining requirements for swap dealers and major swap participants. The NGFA believes that these safeguards provide more-than-ample protection in the swaps marketplace for both agricultural and non-agricultural swaps and that there is no compelling reason to place additional burdens on agricultural swaps.'' NGFA letter at 2.

> In our view, applying a single, uniform set of rules to all swaps will advance the public interests that Dodd-Frank and the CEA are designed to promote and benefit the users of these products.'' CME letter at 1.

> We are pleased that, if enacted, the [NPRM] would revise existing CFTC regulations in order to treat agricultural commodity swaps as ''swaps,'' subjecting them to the same regulatory regime as all other commodity swap transactions under Dodd-Frank.'' FIA & ISDA letter at 2.

> NCFC believes the changes and amendments in the proposed rule will provide an appropriate regulatory framework for the transacting of agricultural swaps. NCFC letter at 1.

Similar sentiments were expressed by Gavilon, Amcot, CMC, the Commodity Options and Agricultural Swaps Working Group, and Barnard.

One comment, from the National Milk Producers Foundation (NMPF), suggested that the Commission use its CEA section 4(c) authority to provide a broad-based exemption exclusively tailored for agricultural swaps transactions by certain agricultural end-users to transact outside of much of the Dodd-Frank swaps regime. The Commission believes that the logical place to address end-user concerns, such as those raised by the NMPF comment, is in the participant definitions and the end-user rules, which are yet to be finalized. The NMPF comment letter has been included in the record for those rulemakings. Addressing the concerns of end-users generally, rather than creating special rules for agricultural end-users, is consistent with the Commission's proposed approach to treat agricultural swaps the same as all other swaps.

C. Comments Regarding Whether the Agricultural Swaps Proposal Satisfies the CEA Section 4(c) Requirements

Commenters generally expressed the opinion that the proposal to allow agricultural swaps to be treated the same as other commodity swaps meets the requirements of Section 4(c)(2) of the CEA.[29] CME noted the robust

[26] The public comment file for the NPRM is available at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=968*. This summary references each of the comments that substantively addressed the NPRM, whether submitted in response to the original NPRM or in response to the re-opened comment period. *See Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act*, 76 FR 25274, May 4, 2011 (this is the Commission's **Federal Register** release that extended the comment deadline for multiple Dodd-Frank rulemakings to June 3, 2011). Only those comments submitted in response to 76 FR 25274 that specifically addressed the agricultural swaps proposal are included in this summary. In addition, the comment file for the NPRM also included multiple comments that did not directly address the Commodity Options and Agricultural Swaps NPRM (for example, see the comments from Majed El Zein, B.J. D'Milli, Maryknoll Office for Global Concerns, Maryknoll Fathers and Brothers, J.C. Hoyt, and Jon Pike). Of these, several addressed other proposed Commission rulemakings, and those comments are being considered in conjunction with the other rulemakings.

[27] *See, e.g.*, comments from The Financial Services Roundtable, which represents 100 of the largest integrated financial services companies in the United States; Edison Electric Institute and Electric Power Supply Association; Federal Energy Regulatory Commission; American Public Gas Association (''APGA''), which represents publicly-owned natural gas distribution systems; Air Transport Association of America (''ATA''); Amcot, an association of U.S. cotton marketing cooperatives; Coalition of Physical Energy Companies, an association of businesses that produce, process, and merchandize energy commodities at retail and wholesale levels; National Rural Electric Cooperative Association, American Public Power Association, and Large Public Power Council, all representing U.S. not-for-profit consumer-owned electric utilities in a joint letter; Working Group of Commercial Energy Firms, a group of unspecified firms which indicated that their primary business is the physical delivery of energy commodities to industrial, commercial and residential consumers; and Hess Corporation.

[28] *See, e.g.*, comments filed on the Commission's **Federal register** release that re-opened the comment period (76 FR 25274, May 4, 2011) from the Commodity Options and Agricultural Swaps Working Group; INTL FCStone Inc.; NEW Cooperative Inc.; NGFA; NCFC; and Innovative Ag Services Co.

[29] CEA section 4(c)(2) requires the CFTC to determine, prior to granting a 4(c) exemption, that (1) Such exemption is consistent with the public interest and purposes of the CEA, and (2) the exempted agreement, contract, or transaction will

regulatory regime introduced for the trading of all swaps under the Dodd-Frank Act and stated that ''permitting agricultural swaps to transact under the same terms and conditions as other swaps will provide greater certainty and stability to the agricultural swaps market and will advance many of Dodd-Frank's goals, including increased pre-trade price transparency, and the reduction of systemic risk through the use of central counterparty clearinghouses.'' Commenters also believed that the proposal would satisfy the Section 4(c)(2) requirement that transactions subject to this exemption would only be entered into by appropriate persons. In this regard, CME noted that ''Under Dodd-Frank, only market participants that qualify as eligible contract participants ('ECPs') may trade swaps in the OTC market. All other market participants must trade swaps on, or subject to the rules of, a DCM, where they will have the full protections that all DCM users enjoy * * * these provisions should limit participation in agricultural swaps to appropriate persons.'' Similar sentiments were expressed by Gavilon, FIA & ISDA, NCFC, and the Commodity Options and Agricultural Swaps Working Group.

One commenter (Professor Greenberger) was generally opposed to the trading of agricultural swaps under the same conditions as other physical commodity swaps. This commenter expressed the belief that speculative investment in agricultural derivatives ''is incontrovertibly a main driving force of rising commodity prices and price volatility,'' and that such price instability harms agricultural producers. He believes that Congress specifically intended for the CFTC to provide special protections to agricultural producers in trading swaps and that the rulemaking runs counter to Congress' intent by providing for equal treatment of agricultural swaps and all other commodity swaps. However, Professor Greenberger did not offer an alternative approach, and the Commission does not find further reasoning to support treating agricultural swaps in a manner different than any other swap.

D. Comments on the Treatment of Commodity Options

As noted above, the options issues raised in the NPRM received multiple substantive comments, which will be addressed by the Commission at a later date.

E. Issues Outside the Scope of the Proposed Rulemaking

Although recognizing that their comments were outside the scope of the subject rulemaking, several commenters requested that the Commission provide clarity regarding the treatment of certain types of swap participants and transactions within the overall regulatory scheme for swaps. In this regard, several commenters requested that the Commission clarify that agricultural producer cooperatives that enter into swaps with their own members or third parties in the course of marketing their members' agricultural products should be considered to be end-users for purposes of the Dodd-Frank clearing exception, and further that the Commission should clarify that producer cooperatives are excluded from the definitions of swap dealer and major swap participant (*see,* for example, comments from NGFA, NCFC, and DFA). The Commission has issued proposed rules regarding: (1) The end-user exception to mandatory clearing of swaps pursuant to § 723 of the Dodd-Frank Act;[30] and (2) further definition of certain terms regarding market participants, including the terms ''swap dealer'' and ''major swap participant,'' pursuant to § 712(d) of the Dodd-Frank Act.[31] Accordingly, the Commission is considering those comments in the context of drafting the end-user exception and the participant definitions rules.

CMC also requested that the Commission clarify that certain types of transactions (embedded options in forward contracts[32] and book-outs[33]) fall within the definition of an excluded forward contract rather than the definition of a swap. Similarly, Amcot requested clarification that ''equity trades'' or ''options to redeem'' cotton from the U.S. Department of Agriculture's Commodity Credit Corporation marketing loan program would not be considered swaps. The Working Group of Commercial Energy Firms provided several examples of ''transactions that energy market participants do not historically consider options, but nonetheless contain an element of optionality * * * and should not be regulated as swaps.'' These include daily natural gas calls, wholesale full requirements contracts for power, tolling agreements in organized wholesale electricity markets, physical daily heat rate call options, and capacity contracts. APGA and ATA requested that the Commission clarify that certain variable amount delivery contracts that are common in the energy sector be excluded from the definition of a swap. Where applicable, those comments are being considered by the Commission, jointly with the SEC, in considering further definitions of terms regarding certain products, including the term ''swap,'' pursuant to § 712(d) of the Dodd-Frank Act.[34]

V. Explanation of the Final Rules for Swaps in an Agricultural Commodity

A. Introduction

After considering the complete record in this matter, including all comments on both the ANPRM and NPRM, the Commission is adopting the revisions to part 35 as proposed. Broadly speaking, the new rules will implement regulations whereby swaps in agricultural commodities may transact subject to the same rules as all other swaps.

Specifically, the final rules adopted herein will operate to withdraw existing part 35 of the Commission's regulations—thus withdrawing the provisions originally adopted in 1993 to provide legal certainty for the bilateral swaps market by largely exempting bilateral swaps meeting the part 35 conditions from CEA regulation.[35] In its place, pursuant to the exemptive authority in CEA section 4(c) and the Commission's authority in CEA section 4c(b),[36] these final rules adopt a new

be entered into solely by appropriate persons and will not have a material adverse effect on the ability of the Commission or a contract market to discharge its regulatory or self-regulatory duties under the CEA.

[30] *See* End-User Exception to Mandatory Clearing of Swaps, 75 FR 80747, Dec. 23, 2010 (comment period closed June 3, 2011).

[31] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 75 FR 80174, Dec. 21, 2010 (joint rulemaking with Securities and Exchange Commission (''SEC''), comment period closed June 3, 2011).

[32] *See* Characteristics Distinguishing Cash and Forward Contracts and ''Trade'' Options, Interpretive Statement of the Commission's General Counsel, 50 FR 39656, Sept. 30, 1985, regarding the differences between forward contracts and options.

[33] A book-out is a separate, subsequent agreement whereby two commercial parties to a forward contract, who find themselves in a delivery chain or circle at the same delivery point, can agree to settle (or ''book-out'') their delivery obligations by exchanging a net payment. *See* Statutory Interpretation Regarding Forward Transactions, 55 FR 39188, Sept. 25, 1990.

[34] *See* footnote 31, above.

[35] ''[Part 35 * * *] exempt[s] swap agreements (as defined herein) meeting specified criteria from regulation under the Commodity Exchange Act (the ''Act''). This rule was proposed pursuant to authority recently granted the Commission, a purpose of which is to give the Commission a means of improving the legal certainty of the market for swaps agreements.'' 58 FR 5587, Jan. 22, 1993.

[36] Recall that original part 35 was adopted pursuant to CEA sections 4(c) and 4c(b). The Commission is clarifying now that the new part 35, which will apply only to swaps in agricultural

Continued

part 35 to provide the primary authority for transacting swaps in an agricultural commodity as authorized by sections 723(c)(3) and 733 of the Dodd-Frank Act.

B. Withdrawal of Current Part 35

In enacting the Futures Trading Practices Act of 1992 (the ''1992 Act''),[37] Congress added section 4(c) to the CEA and authorized the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirement of CEA section 4(a), or (with minor exceptions not relevant here) from any other provision of the Act.[38] Pursuant to its new authority in section 4(c),[39] the Commission proposed in 1992[40] and adopted in 1993[41] part 35 of the Commission's regulations, generally exempting certain swap agreements from the CEA. As explained above, part 35 originally applied to all commodities—that is, exempt, excluded, and agricultural commodities. However, certain amendments to the CEA made by the CFMA had the effect of making part 35 relevant only for swaps in agricultural commodities.

The Dodd-Frank Act amends, repeals, or replaces many CEA sections added by the CFMA (including repealing the statutory exemptions for swaps in excluded and exempt commodities at pre Dodd-Frank CEA sections 2(d), 2(g), and 2(h)). To avoid any uncertainty as to whether the Commission will allow bilateral swaps in non-agricultural commodities to revert to reliance on existing part 35 for exemption from the CEA and the Dodd-Frank amendments, the Commission is now repealing and replacing current part 35 in its entirety.

C. New Part 35

The provisions of new part 35, as proposed in the NPRM and as adopted herein, generally provide that agricultural swaps may be transacted subject to all provisions of the CEA, and any Commission rule, regulation or order thereunder, that is otherwise applicable to swaps. New part 35 also clarifies that by issuing a rule allowing agricultural swaps to transact subject to the laws and rules applicable to all other swaps, the Commission is allowing agricultural swaps to transact on DCMs, SEFs, or otherwise to the same extent that all other swaps are allowed to trade on DCMs, SEFs, or otherwise.

D. Effective Date

The repeal of original part 35 and the rules in new part 35 shall become effective on December 31, 2011. This will coincide with the expiration of the 4(c) transition relief promulgated by the Commission to accommodate the phasing in of the Dodd-Frank swaps rules.[42]

VI. Findings Pursuant to Section 4(c)

As noted above, section 723(c)(3)(A) of the Dodd-Frank Act prohibits swaps in an agricultural commodity. However, section 723(c)(3)(B) of the Dodd-Frank Act explicitly provides that the Commission may permit swaps in an agricultural commodity pursuant to CEA section 4(c), the Commission's general exemptive authority, ''under such terms and conditions as the Commission shall prescribe.'' Accordingly, the amendments to part 35 adopted herein are adopted pursuant to CEA section 4(c), as amended by the Dodd-Frank Act.[43]

Section 4(c)(1) of the CEA authorizes the CFTC to exempt any transaction or class of transactions from any of the provisions of the CEA (subject to exceptions not relevant here) in order to ''promote responsible economic or financial innovation and fair competition.''[44] The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative. In enacting section 4(c), Congress noted that the goal of the provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.''[45]

In order to analyze the effect of permitting agricultural swaps to trade under the same terms and conditions as other swaps, it is appropriate to examine some of the major components of the Dodd-Frank Act that apply to swaps generally. The Commission originally performed this review in the NPRM, and repeats the analysis here for convenient reference: Section 727 of the Dodd-Frank Act adds, among other things, a new CEA section 2(a)(13) that mandates that swap transaction and pricing data be made available to the public. Section 723(a)(3) of the Dodd-Frank Act adds a new CEA section 2(h) that provides that the Commission shall determine which swaps are subject to a mandatory clearing requirement. New CEA section 2(h) also provides that swaps that are required to be cleared must be executed on a DCM or SEF, if a DCM or SEF makes the swap available for trading. As noted above, part 35, as it is currently written, does not permit clearing of agricultural swaps and does not contemplate any reporting of agricultural swaps data.

Permitting agricultural swaps to trade under the same terms and conditions as other swaps should provide greater certainty and stability to existing and

commodities, is similarly adopted pursuant to the authorities found in CEA sections 4(c) and 4c(b).

[37] Public Law 102–546 (Oct. 28, 1992).

[38] While section 4(c) was amended by the Dodd-Frank Act, for the purposes of this rulemaking its function and effect have not changed. See 4(c) discussion, below.

[39] As noted above, original part 35 was also adopted pursuant to the Commission's authority in CEA section 4c(b).

[40] *See* the original proposal at 57 FR 53627, Nov. 12, 1992. *See also* 57 FR 58423, Dec. 28, 1992, extending the comment period for an additional fourteen days.

[41] 58 FR 5587, Jan. 22, 1993.

[42] *See* Effective Date for Swap Regulation, 76 FR 42508, July 19, 2011 (effective July 14, 2011). As noted by the Commission in the transition relief, existing part 35 remains available until part 35 is repealed or replaced.

[43] In addition to 4(c), these final rules are also being adopted pursuant to the Commission's authority under CEA section 4c(b)—just as original part 35 was adopted pursuant to both CEA section 4(c) and 4c(b).

[44] New section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), as amended by the Dodd-Frank Act, provides in full that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except subparagraphs (C)(ii) and (D) of section 2(a)(1), except that—

(A) Unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

(i) With respect to—

(I) Paragraphs (2), (3), (4), (5), and (7), paragraph (18)(A)(vii)(III), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a, and sections 2(a)(13), (2)(c)(1)(D), 4a(a), 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a), 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i), 8e, and 21; and

(II) Section 206(e) of the Gramm-Leach-Bliley Act (Pub. L. 106–102; 15 U.S.C. 78c note); and

(ii) In sections 721(c) and 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(B) The Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) if the Commissions determine that the exemption would be consistent with the public interest.

[45] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

emerging markets so that financial innovation and market development can proceed in an effective and competitive manner. Treating all swaps, including agricultural swaps, in a consistent manner should provide greater certainty to markets. The Dodd-Frank Act reporting and trade execution requirements should lead to greater market and price transparency, which may improve market competition, innovation, and development. Centralized clearing of agricultural swaps by robustly regulated central clearinghouses should reduce systemic risk and provide greater certainty and stability to markets by reducing counterparty risk.

As noted above, the NPRM requested comment on whether swaps in agricultural commodities should be subject to the same legal requirements as swaps in other commodities. The overwhelming majority of those comments, as summarized above, did in fact support treating agricultural swaps the same as every other swap. Further, no commenter offered a persuasive argument for treating agricultural swaps differently than other swaps under the Dodd-Frank Act. Thus, no commenter demonstrated that the proposal to treat agricultural swaps the same as every other swap failed to ''promote responsible economic or financial innovation and fair competition.''

Section 4(c)(2) of the CEA provides that the Commission may grant exemptions only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts or transactions at issue; that the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or Commission-regulated markets to discharge their regulatory or self-regulatory responsibilities under the CEA.[46]

The purposes of the CEA include ''ensur[ing] the financial integrity of all transactions subject to this Act and the avoidance of systemic risk'' and ''promot[ing] responsible innovation and fair competition among boards of trade, other markets and market participants.''[47] As noted above, centralized clearing of agricultural swaps (which is not permitted under the current part 35 rules) should reduce systemic risk. Also, allowing agricultural swaps to trade under the general swaps rules contained in the Dodd-Frank Act would allow agricultural swaps to trade on SEFs and DCMs (which is prohibited under the current part 35 rules) which may result in increased innovation and competition in the agricultural swaps market. Reducing systemic risk and increasing innovation and competition by permitting agricultural swaps to trade under the same terms and conditions as other swaps would be consistent with the purposes listed above, the general purposes of the CEA, and the public interest.

As noted above, the Dodd-Frank Act contains substantial new clearing and trade execution requirements for swaps. The clearing requirement is designed, among other things, to reduce the counterparty risk of a swap, and therefore to reduce systemic risk. The swap reporting and trade execution requirements should provide additional market information to the Commission, the markets, and the public. Thus, treating agricultural swaps in the same manner as other swaps may enhance the ability of the Commission or Commission-regulated markets to discharge their regulatory or self-regulatory responsibilities under the CEA.

Section 4(c)(3) of the CEA includes within the term ''appropriate persons'' a number of specified categories of persons, and also in subparagraph (K) thereof ''such other persons that the Commission determines to be appropriate in light of * * * the applicability of appropriate regulatory protections.'' Section 723(a)(2) of the Dodd-Frank Act adds, among other things, a new CEA section 2(e) that provides: ''It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a [DCM].''[48] In light of the comprehensive new regulatory scheme for swaps and the enhancements made to the already robust regulatory system concerning DCMs[49] that are contained in the Dodd-Frank Act, the limitation on participation to eligible contract participants outside of a DCM, and the ability of others to enter into a swap on a DCM, should limit participation to appropriate persons. The Commission requested comment on its analysis of both section 4(c)(2) and section 4(c)(3). As noted in the comment summary above, those commenters addressing the question supported the Commission's analysis under both 4(c)(2) and 4(c)(3).

VII. Related Matters

A. Cost Benefit Considerations

Section 15(a) of the CEA[50] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of the rulemaking or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

i. Summary of Proposed Requirements

The proposed rule will replace the swaps exemption in part 35 with new rules providing, in general, that agricultural swaps would be treated the same as all other swaps. As the Commission continues to propose and adopt rules implementing the Dodd-Frank Act, any costs associated with adhering to the substantive requirements that govern swaps generally are and will be addressed in

[46] Section 4(c)(2) of the CEA, 7 U.S.C. 6(c)(2), provides in full that:

The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) The requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) The agreement, contract, or transaction—

(i) Will be entered into solely between appropriate persons; and

(ii) Will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

[47] CEA section 3(b), 7 U.S.C. 5(b).

[48] New CEA section 2(e), (7 U.S.C. 2(e)).

[49] *See, e.g.,* new CEA section 5(d) (7 U.S.C. 7(d)) as added by section 735(b) of the Dodd-Frank Act and amended CEA section 5c (7 U.S.C. 7a–2) as amended by section 745 of the Dodd-Frank Act.

[50] 7 U.S.C. 19(a).

those various rulemakings applying to swaps generally. For purposes of this discussion, the Commission appropriately considers the costs and benefits of treating agricultural swaps as all other swaps are treated—as compared to adopting or maintaining a separate regulatory regime for agricultural swaps. The Commission has determined that treating agricultural swaps the same as other swaps would result in lower regulatory cost to both market participants and the Commission, because such treatment would eliminate dual regulatory regimes with which market participants must comply and the Commission must oversee.

ii. Market and Public Concern

(1) Protection of market participants and the public. The Dodd-Frank Act added numerous provisions to the CEA to protect market participants and the public, such as the segregation of funds for uncleared swaps, swap dealer registration and regulation that includes business conduct standards, and limitations on conflicts of interest. Current part 35 exempts qualifying swaps from nearly all sections of the CEA, so that these and other protections contained in Dodd-Frank would not apply to agricultural swaps entered into under part 35. As noted by commenters, in contrast to part 35, the new Dodd-Frank Act regulatory regime is both robust and comprehensive and will provide significant new protections to swap market participants.[51]

(2) Efficiency, competitiveness, and financial integrity of futures markets. Having a single set of regulations governing all swap transactions reduces compliance costs for markets and market participants, as well as eases the administrative burden on the Commission. Commenters agreed with this analysis.[52] Furthermore, if the Commission did not permit agricultural swaps to transact subject to the same laws and rules as other commodity swaps, users of agricultural swaps that also engage in other types of swaps would be subject to dual regulatory regimes. These streamlined regulations may lead to improved efficiency, competitiveness and financial integrity of futures markets.

(3) Price discovery. The Dodd-Frank Act contains numerous provisions designed to improve price discovery such as the provisions encouraging the clearing of swaps and the trading of swaps on DCMs and SEFs. For instance, the Dodd-Frank Act mandates that swap transaction and pricing data be made available to the public. This reporting and the Dodd-Frank trade execution requirements should foster greater market and price transparency, and thus better price discovery.

(4) Sound risk management practices. Several commenters similarly noted that agricultural swaps are important risk management tools and that such swaps should be available on the same terms and conditions as other swaps that are used to manage risk.[53] In contrast, original part 35, by its terms, would not generally allow for swaps that adhered to the clearing or trade execution provisions contained in Dodd-Frank.

(5) Other public interest considerations. Treating agricultural swaps the same as other swaps would subject those swaps to the numerous provisions in the Dodd-Frank Act that protect market participants and the public, such as the segregation of funds for uncleared swaps, limitations on conflicts of interest, and swap dealer registration and regulation that includes business conduct standards.[54] Moreover, the clearing requirement in the Dodd-Frank Act is intended to reduce systemic risk which should further protect the public. Thus, concerns that are special to agricultural swaps that might have existed under the pre Dodd-Frank regulatory regime may be allayed.

iii. Conclusion

After considering the section 15(a) factors, the Commission has determined that the benefits of amended part 35 outweigh the costs.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[55] The proposed rule, in replacing part 35, would affect eligible swap participants (''ESPs'') (by eliminating the ESP category and requiring agricultural swap participants to be eligible contract participants (''ECPs''), unless the transaction occurs on a designated contract market (''DCM'')). By mandating that agricultural swaps and options be treated as all other swaps, the effect of the proposed rule has the potential to affect DCMs, derivatives clearing organizations (''DCOs''), futures commission merchants (''FCMs''), large traders and ECPs, as well as swap dealers (''SDs''), major swap participants (''MSPs''), commodity pool operators (''CPOs''), swap execution facilities (''SEFs''), and swap data repositories (''SDRs'').

i. DCMs, DCOs, FCMs, CPOs, large traders, ECPs, and ESPs. The Commission has previously determined that DCMs, DCOs, FCMs, CPOs, large traders, ECPs, and ESPs are not small entities for purposes of the Regulatory Flexibility Act.[56] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these final rules will not have a significant economic impact on a substantial number of small entities with respect to these entities.

ii. SDs, MSPs, SEFs, and SDRs. SDs, MSPs, SEFs, and SDRs are new categories of registrant under the Dodd-Frank Act. Therefore, the Commission has not previously addressed the question of whether SDs, MSPs, SEFs, and SDRs are, in fact, ''small entities'' for purposes of the RFA. For the reasons that follow, the Commission is hereby

[51] ''The NGFA believes that these [Dodd-Frank] safeguards provide more-than-ample protection in the swaps marketplace for both agricultural and non-agricultural swaps and that there is no compelling reason to place additional burdens on agricultural swaps.'' NGFA letter at 2. *See also* the Commodity Options and Agricultural Swaps Working Group letters. Also, ''In our view, applying a single, uniform set of rules to all swaps will advance the public interests that Dodd-Frank and the CEA are designed to promote and benefit the users of these products.'' CME letter at 1.

[52] ''[S]treamling swap regulation so that agricultural swaps are treated the same as other swaps will enable the Commission and Commission-regulated markets to discharge their regulatory duties more efficiently.'' CME letter at 2; *see also* CMC letter and Barnard letter.

[53] ''By applying the same regulatory structure and requirements to agricultural swaps as to other commodity swaps, the [NPRM] will promote legal certainty and an efficient allocation of compliance resources. * * * The costs of imposing an alternative regulatory structure on this important and well-functioning market would substantially outweigh any benefits. It could also make it more difficult for agricultural market participants to hedge their commercial risks.'' *See* Commodity Options and Agricultural Swaps Working Group 4/11/11 letter at 2–3; *see also* Gavilon letters.

[54] ''[A] consistent approach to the regulation of all types of commodity swaps would eliminate the need to impose additional conditions on agricultural swaps. Equivalent treatment also would increase regulatory certainty in commodity markets by allowing market participants to structure documentation and compliance protocols consistently across commodity desks. Applying many aspects of the Dodd-Frank Act to agricultural swaps on an equivalent basis as other commodity swaps (*e.g.,* registration, clearing, and reporting) also would promote the Commission's stated mission of bringing more transparency to the OTC derivatives markets.'' Commodity Options and Agricultural Swaps Working Group 10/29/10 letter at 6.

[55] 5 U.S.C. 601 *et seq.*

[56] *See,* respectively and as indicated, 47 FR 18618, 18619, Apr. 30, 1982 (DCMs, CPOs, FCMs, and large traders); 66 FR 45604, at 45609, Aug. 29, 2001 (DCOs); 66 FR 20740, 20743, Apr. 25, 2001 (ECPs); and 57 FR 53627, 53630, Nov. 12, 1992 and 58 FR 5587, 5593, Jan. 22, 1993 (ESPs).

determining that none of these entities would be small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these final rules, with respect to SDs, MSPs, SEFs, and SDRs, will not have a significant impact on a substantial number of small entities.

a. SDs: As noted above, the Commission previously has determined that FCMs are not small entities for the purpose of the RFA based upon, among other things, the requirements that FCMs meet certain minimum financial requirements that enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[57] SDs similarly will be subject to minimum capital and margin requirements, and are expected to comprise the largest global financial firms. Entities that engage in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers will be exempted from designation as an SD. For purposes of the RFA in this rulemaking, the Commission is hereby determining that SDs are not ''small entities'' for essentially the same reasons that FCMs have previously been determined not to be small entities.

b. MSPs: The Commission also has determined that large traders are not small entities for the purpose of the RFA.[58] The Commission considered the size of a trader's position to be the only appropriate test for purposes of large trader reporting.[59] MSPs, among other things, maintain substantial positions in swaps, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. For purposes of the RFA, the Commission is hereby determining that MSPs are not ''small entities'' for essentially the same reasons that large traders have previously been determined not to be small entities.

c. SEFs: The Dodd-Frank Act defines a SEF to mean a trading system or platform in which multiple participants have the ability to accept bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility that facilitates the execution of swaps between persons and is not a DCM. The Commission has previously determined that a DCM is not a small entity because, among other things, it may only be designated when it meets specific criteria, including expenditure of sufficient resources to establish and maintain adequate self-regulatory programs. Likewise, the Commission will register an entity as a SEF only after it has met specific criteria, including the expenditure of sufficient resources to establish and maintain an adequate self-regulatory program. Accordingly, as with DCMs, the Commission is hereby determining that SEFs are not ''small entities'' for purposes of the RFA.

d. SDRs: The Commission has previously determined that DCMs and DCOs are not small entities because of ''the central role'' they play in ''the regulatory scheme concerning futures trading.''[60] Because of the ''importance of futures trading in the national economy,'' to be designated as a contract market or registered as a DCO, the respective entity must meet stringent requirements set forth in the CEA.[61] Similarly, swap transactions that are reported and disseminated by SDRs are an important part of the national economy. SDRs will receive data from market participants and will be obligated to facilitate swaps execution by reporting real-time data.[62] Similar to DCOs and DCMs, SDRs will play a central role both in the regulatory scheme covering swaps trading and in the overall market for swap transactions. Additionally, the Dodd-Frank Act allows DCOs to register as SDRs. Accordingly, for essentially the same reasons that DCOs and DCMs have previously been determined not to be small entities, the Commission is hereby determining that SDRs are not ''small entities'' for purposes of the RFA.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA),[63] 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 control number from the Office of Management and Budget (OMB). The Commission believes that these proposed rules will not impose any new information collection requirements that require approval of OMB under the PRA.

In the NPRM, the Commission noted that, as a general matter, the proposed rules would allow agricultural swaps to trade under the same terms and conditions as all other swaps and that the proposed rules do not, by themselves, impose any new information collection requirements. The NPRM also noted that collections of information that may be associated with engaging in agricultural swaps are, or will be, addressed within each of the general swap-related rulemakings implementing the Dodd-Frank Act. The Commission requested public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements would result from the rules proposed herein, and none of the comments received addressed this request.

Therefore, the Commission notes that, as a general matter, the final rules adopted herein will allow agricultural swaps to trade under the same terms and conditions as all other swaps and that the final rules do not, by themselves, impose any new information collection requirements. Collections of information that may be associated with engaging in agricultural swaps are, or will be, addressed within each of the general swap-related rulemakings implementing the Dodd-Frank Act.

VIII. Final Rules

List of Subjects in 17 CFR Part 35

Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Act, as indicated herein, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

■ 1. Revise part 35 to read as follows:

PART 35—SWAPS IN AN AGRICULTURAL COMMODITY (AGRICULTURAL SWAPS)

Authority: 7 U.S.C. 2, 6(c), and 6c(b); and title VII, sec. 723(c)(3), Pub. L. 111–203, 124 Stat. 1376, unless otherwise noted.

§ 35.1 Agricultural swaps, generally.

(a) Any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a swap in an agricultural commodity subject to all provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap; and

(b) In addition to paragraph (a) of this section, any transaction in interstate

[57] 47 FR 18619.

[58] *Id.* at 18620.

[59] *Id.*

[60] 47 FR at 18619 (DCMs) and 66 FR at 45609 (DCOs).

[61] *See* new CEA section 5(d), as added by section 735(b) of the Dodd-Frank Act regarding DCM core principles and new CEA section 5b(c)(2), as added by section 725(c) of the Dodd-Frank Act regarding DCO core principles.

[62] *See* new CEA section 21, as added by section 728 of the Dodd-Frank Act.

[63] 44 U.S.C. 3501 *et seq.*

commerce that is a swap in an agricultural commodity may be transacted on a swap execution facility, designated contract market, or otherwise in accordance with all provisions of the Act, including any Commission rule, regulation, or order thereunder, applicable to any other swap eligible to be transacted on a swap execution facility, designated contract market, or otherwise.

Issued in Washington, DC, on August 4, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Agricultural Swaps—Commission Voting Summary and Statements of Commissioners

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

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking to authorize agricultural swap transactions and subject them to the same rules applicable to all other swaps transactions. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) prohibits such transactions if the Commodity Futures Trading Commission (CFTC) does not specifically authorize them. The public comments the CFTC received overwhelmingly supported treating agricultural swaps the same as other swaps brought under regulation by the Dodd-Frank Act. Agricultural producers, processers, merchants and handlers will benefit from the ability to use agricultural swaps to hedge their risk and from the transparency of the Dodd-Frank Act.

[FR Doc. 2011–20337 Filed 8–9–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9475]

RIN 1545–BF83

Corporate Reorganizations; Distributions Under Sections 368(a)(1)(D) and 354(b)(1)(B); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document describes a correction to final regulations (TD 9475) that were published on Friday, December 18, 2009 (74 FR 67053). The regulations provide guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction. This document also contains final regulations under section 358 that provide guidance regarding the determination of the basis of stock or securities in a reorganization described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction. This document also contains final regulations under section 1502 that govern reorganizations described in section 368(a)(1)(D) involving members of a consolidated group.

DATES: This correction is effective on August 10, 2011 and is applicable on December 18, 2009.

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9475) that are the subject of this document are under sections 358, 368 and 1502 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9475) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.1502–13 is amended by adding paragraph (l)(6) to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(l) * * *

(6) *Effective/applicability date.* (i) *In general.* Paragraph (f)(7)(i) *Example 4.* applies to transactions occurring on or after December 18, 2009.

(ii) [Reserved]

* * * * *

LaNita Van Dyke,

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

[FR Doc. 2011–20224 Filed 8–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0740]

Drawbridge Operation Regulations; Pequonnock River, Bridgeport, CT, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Metro North (Peck) Bridge across the Pequonnock River, mile 0.3, at Bridgeport, Connecticut. The deviation allows the bridge to remain in the closed position to facilitate miter rail repair.

DATES: This deviation is effective from August 22, 2011 through November 30, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0740 and are available online at *http://www.regulations.gov*, inserting USCG–2011–0740 in the ''Keyword'' and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, e-mail *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Metro North (Peck) Bridge, across the

Pequonnock River, mile 0.3, at Bridgeport, Connecticut, has a vertical clearance in the closed position of 26 feet at mean high water and 32 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.219(b).

The operator of the bridge, Metro North Railroad, requested a temporary deviation from the regulations to facilitate scheduled bridge maintenance, miter rail repair, at the bridge.

The waterway users are recreational vessels and commercial lobster boats. The Metro North (Peck) Bridge rarely opens for vessel traffic. The bridge has received no requests to open during the past two years except for bridge testing and repairs.

Under this temporary deviation the Metro North (Peck) Bridge may remain in the closed position from August 22, 2011 through November 30, 2011. Vessels that can pass under the bridge in the closed position may do so at all times.

The waterway users were advised of the requested bridge closure and offered no objection.

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

Dated: July 29, 2011

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–20247 Filed 8–9–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0044]

RIN 1625–AA11

Regulated Navigation Area; Columbus Day Weekend, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area (RNA) on Biscayne Bay in Miami, Florida. The RNA will be enforced annually on the Saturday and Sunday of the second week in October (Columbus Day weekend). It includes all waters within one nautical mile of the center of the Intracoastal Waterway between Featherbed Bank and the Rickenbacker Causeway Bridge. All vessels within the RNA are: required to transit the RNA at no more than 15 knots; subject to control by the Coast Guard; and required to follow the instructions of all law enforcement vessels in the area. This RNA is necessary to ensure the safe transit of vessels and to protect the marine environment.

DATES: The rule will be effective September 9, 2011, and will be enforced daily from 12:01 p.m. until 11:59 p.m. on the Saturday and Sunday of the second week in October (Columbus Day weekend) each year.

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–2011–0044 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0044 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Jennifer S. Makowski, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, e-mail *Jennifer.S.Makowski@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 May 3, 2011, we published a notice of proposed rulemaking (NPRM) entitled USCG–2011–0044 in the **Federal Register** (76 FR 24837). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas (RNAs) and limited access areas: 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.

The purpose of the rule is to ensure the safe transit of vessels in the area and to protect all persons, vessels, and the marine environment.

Discussion of Rule

This rule designates an RNA encompassing all waters within one nautical mile of the center of the Intracoastal Waterway from Featherbed Bank extending 14 nautical miles north to the Rickenbacker Causeway Bridge in Miami, Florida. The RNA will be enforced daily from 12:01 p.m. until 11:59 p.m. on the Saturday and Sunday of the second week in October (Columbus Day weekend) each year. All vessels within the RNA are: (1) Required to transit the area at no more than 15 knots; (2) subject to control by the Coast Guard; and (3) required to follow the instructions of all law enforcement vessels in the area.

The RNA is necessary to ensure the safety of the public. The close proximity of numerous vessels transiting that portion of the Intracoastal Waterway encompassed within the RNA during Columbus Day weekend poses a hazardous condition. The RNA will result in the transiting of vessels at a safer speed, thereby significantly reducing the threat of vessel collisions. Requiring vessels within the RNA to transit at no more than 15 knots will also enable law enforcement officials to identify, respond to, query, and stop operators who may pose a hazard to other vessels in the area. Nothing in this regulation alleviates vessels or operators from complying with all other Federal, state, and local laws in the area, including manatee slow speed zones.

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) The RNA will be in effect for only two days each year; (2) although during the enforcement period vessels will be required to transit the RNA at no more than 15 knots, be subject to control by

the Coast Guard, and be required to follow the instructions of all law enforcement vessels in the area, the RNA does not prohibit vessels from transiting the area; (3) vessels may still operate in surrounding waters that are not encompassed within the RNA without the restrictions imposed by the RNA; and (4) advance notification of the RNA's enforcement will be made to the local maritime community via 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 will 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 transit the RNA on the Saturday and Sunday of the second week in October (Columbus Day weekend). For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have 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), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction. This rule involves establishing an RNA, as described in paragraph 34(g) of the Instruction, from Featherbed Bank in Biscayne Bay north to the Rickenbacker Causeway in Miami, Florida. 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ Add § 165.779 to read as follows:

§ 165.779 Regulated Navigation Area; Columbus Day Weekend, Biscayne Bay, Miami, FL.

(a) *Regulated area.* The regulated navigation area encompasses all waters in Biscayne Bay between Featherbed Bank and the Rickenbacker Causeway Bridge contained within an imaginary line connecting the following points: beginning at Point 1 in position 25°44′49″ N, 80°12′02″ W; thence southwest to Point 2 in position 25°31′21″ N, 80°15′28″ W; thence southeast to Point 3 in position 25°30′53″ N, 80°13′20″ W; thence northeast to Point 4 in position 25°43′57″ N, 80°10′01″ W; thence back to origin. All coordinates are North American Datum 1983.

(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 Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) During each enforcement period, all vessels within the regulated area are required to transit at no more than 15 knots, are subject to control by the Coast Guard, and must follow the instructions of designated representatives.

(2) At least 48 hours prior to each enforcement period, the Coast Guard will provide notice of the regulated area through advanced notice via Local Notice to Mariners and Broadcast Notice to Mariners.

(d) *Enforcement period.* This rule will be enforced daily from 12:01 p.m. until 11:59 p.m. on the Saturday and Sunday of the second week in October (Columbus Day weekend) each year.

Dated: June 26, 2011.

William D. Baumgartner,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2011–20246 Filed 8–9–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0448; FRL–9450–1]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Rules Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking several actions on a revision to the Minnesota State Implementation Plan (SIP) which updates Minnesota's rules in the SIP. The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision to EPA on May 5, 2008. The revisions to Minnesota's air quality rules reflect changes that have occurred to the state rules since 1998. EPA is approving the majority of MPCA's submittal, which will result in consistent enforceability of rules at the state and Federal levels. EPA is deferring action on two sections of Minnesota's rules related to the state's operating permit program. Finally, EPA is disapproving the state's request to remove the Minneapolis/St. Paul vehicle inspection and maintenance program from the Minnesota SIP. These actions are consistent with the Clean Air Act (CAA) and EPA regulations.

DATES: This direct final rule will be effective October 11, 2011, unless EPA receives adverse comments by September 9, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0448, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312)408–2279.
4. *Mail:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2008–0448. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://*

www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Christos Panos, Environmental Engineer, at (312)353–8328, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353–8328, *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Review of State Submittal
II. What action is EPA taking?
III. Statutory and Executive Order Reviews

I. Review of State Submittal

Since EPA last approved rules into the Minnesota SIP in 1998, Minnesota has revised or updated many of its air rules. These revisions have not been incorporated into the Minnesota SIP. This has resulted in out-of-date rules in the Minnesota SIP, which can result in inconsistent enforceability of rules at the state and Federal levels. On May 5, 2008, the Minnesota Pollution Control Agency (MPCA) submitted a request to update the rules contained in the Minnesota SIP to be consistent with the rules changes that have occurred at the state level, as well as to remove a number of regulations that have been repealed by the state and no longer need to be included in the Minnesota SIP. The following sections of Minnesota's air rules have undergone changes: Minnesota Rules chapter 7001 Permits and Certifications; Minn. R. ch. 7002 Permit Fees; Minn. R. ch. 7005 Definitions and Abbreviations; Minn. R. ch. 7007 Air Emissions Permits; Minn. R. ch. 7008 Exempt Air Emissions; Minn. R. ch. 7009 Ambient Air Quality Standards; Minn. R. ch. 7011 Standards for Stationary Sources; Minn. R. ch. 7017 Monitoring and Testing Requirements; Minn. R. ch. 7019 Emission Inventory Requirements; Minn. R. ch. 7023 Mobile and Indirect Sources. All rule changes were made under the MPCA's rulemaking authority and went through appropriate public participation procedures as required by state law. The rule revisions do not adversely affect the air quality in the state of Minnesota and are being approved for their SIP strengthening purposes.

Summary of Changes to Minnesota's Air Rules

Minnesota performed a series of so-called ''Omnibus'' rulemakings to implement minor changes, correct mistakes, clarify requirements, and address comments from industry, MPCA, and EPA to previously adopted rules. Most of these changes were minor and were not significant enough to warrant individual rulemakings. The changes correct and improve rules to make them more understandable, up-to-date, and streamlined. Summaries of the more significant changes to the rules are described below.

The amendments to Minn. R. ch. 7005 add definitions that are used in Minn. R. ch. 7007, 7008, and 7011. For example, the definition of ''emission factors'' has changed to reflect inclusion of Hazardous Air Pollutants in EPA databases, to remove the obsolete AIRS database, and to remove the implied hierarchy of emission factor sources. Other changes to Minn. R. ch. 7005 include changes to the definitions of ''construction'' and ''begin actual construction'' (and removal of the term ''commence'' and its definition) for consistency with the EPA definitions and to clarify what activities may occur prior to obtaining a permit.

In Minn. R. ch. 7009, MPCA updated the rule to reflect changes to the ozone and PM2.5 National Ambient Air Quality Standards (NAAQS). The state also made changes to the rule to clarify which facilities are required to prepare emission reduction plans and clarified the requirements for submitting these plans to the MPCA.

In Minn. R. ch. 7011, MPCA clarified that the control equipment rules, Minn. R. 7011.0060 to 7011.0080, apply to facilities that elected to use default control efficiencies, monitoring and recordkeeping requirements, and updated the rules so that they reflect modern day control assumptions and can potentially be utilized by more permittees to help them determine permit applicability. In addition, changes were made to the pollution control equipment listed in the table in Minn. R. 7011.0080 to define certain terms, to add listed control equipment, and to otherwise clarify requirements for control efficiency and control equipment operation and monitoring.

In Minn. R. 7011.0900–0922, MPCA amended the asphalt concrete plant rules by adding performance standards for hot mix asphalt plants. The amendments to the asphalt plant performance standards added operation, record keeping, and monitoring requirements for hot mix asphalt plant control equipment and dryer burners, outlined performance test frequency which is dependent on control equipment type, changed the opacity standard for existing plants to remove allowance of opacity excursions, listed materials allowed to be processed by hot mix asphalt plants, and allowed small production throughput increases for all plants which test at less than 80% of their emission limit and additional increase for plants with baghouses whose tested emission rate is less than 50% of their emission limit.

The changes to Minn. R. ch. 7017 relate to the use of two types of Continuous Monitoring Systems (CMS)—Continuous Emission Monitoring Systems (CEMS) and Continuous Opacity Monitoring Systems (COMS). Prior to the revisions, CMS related requirements were scattered throughout a number of locations within Minnesota's rules. The current SIP approved CEMS rule, Minn. R. 7017.1000, was repealed and replaced with more detailed CMS rules which consolidated all CMS requirements. Minn. R. 7017.1002 to 7017.1220 identify which facilities are required to install CMS and the various testing, installation, certification, operational and design requirements for the monitoring systems. The revised CMS rules also delineate the recordkeeping and submittal requirements. All facilities which report CMS derived emissions data to MPCA will be subject to the requirements of the revised CMS rules.

Amendments that MPCA made to Minn. R. ch. 7019 include changes related to emission inventory requirements such as: added ammonia as an inventory pollutant; increased allowable capture efficiency for VOC controls with hoods from 60 to 80 percent; allow the use of stack test data up to 10 years old; and, for stack test data over 10 years old, to allow the use of the higher of either the emission factor derived from the stack test or the default emission factor.

EPA Deferred Actions

Minnesota also made several changes to Minn. R. ch. 7007, including rules to implement Minnesota's operating permit program under Title V of the CAA. EPA expressed concerns about the approvability of certain amended provisions related to the state's Title V operating permit program. Therefore, in a letter dated December 13, 2010, MPCA withdrew its submittal of Minn. R. ch.

7007 for inclusion into the Minnesota SIP. Although MPCA indicated in their December 13, 2010, letter that Minn. R. 7007.5000, relating to Best Available Retrofit Technology, should be approved into the SIP, MPCA also stated that they made the same request to approve Minn. R. 7007.5000 in their December 30, 2009, submittal of the Minnesota Regional Haze SIP. EPA will therefore defer rulemaking on Minn. R. 7007.5000 until it takes action on the Minnesota Regional Haze SIP. In addition, because of the permitting relationship to Minn. R. ch. 7007, EPA will defer rulemaking on changes to Minn. R. ch. 7002 and Minn. R. ch. 7008 until MPCA resubmits Minn. R. ch. 7007 for approval into the SIP. (Minn. R. ch. 7002 addresses permit fees and Minn. R. ch. 7008 addresses permit exemptions and insignificant activities for purposes of Minn. R. ch. 7007.)

Elimination of Regulations

In their May 5, 2008, submittal MPCA also requested the removal from the SIP of several obsolete rules that were repealed by the state in 2005. This included changes to Minn. R. ch. 7001, which established permits and certifications issued by the MPCA. Language currently in the SIP governing mobile sources and indirect source permits for parking facilities is also obsolete as the rules governing indirect source permits were repealed by the Minnesota Legislature in 2001. The portions of Minn. R. ch. 7001 that were retained by MPCA do not relate to air permits or any air quality related requirements. Therefore, EPA is granting MPCA's request for removal of Minn. R. ch. 7001 from the SIP.

A second set of regulations requested for removal by MPCA are contained in Minn. R. ch. 7011. This includes a large portion of the rules in Minn. R. 7011.1200, which relate to Standards of Performance for waste combustors. The rules as currently approved into the SIP have been repealed by MPCA, and Minnesota's new rules governing these sources have been submitted to EPA as a 111(d) plan. EPA agrees with MPCA that the new rules do not need to be considered for inclusion into the SIP. MPCA also repealed the state standards of performance for portland cement plants in Minn. R. 7011.0800, as there are no existing portland cement plants in the state. All new plants would be subject to 40 CFR part 60, subpart F, ''Standards of Performance for Portland Cement Plants,'' that was incorporated by reference by the state in Minn. R. 7011.0830. Finally, the permitting exemption for concrete manufacturing plants was repealed from Minn. R. 7011.0860 and moved to Minn. R. ch. 7008. EPA concurs with Minnesota's request and is removing these regulations from Minn. R. ch. 7011 in the SIP.

A final set of regulations requested for removal, Minn. R. 7023.1010 through 7023.1105, concern the Minneapolis/St. Paul vehicle inspection and maintenance program. The Minneapolis/St. Paul carbon monoxide (CO) nonattainment area was redesignated to attainment on October 29, 1999, at 64 FR 58344, effective November 29, 1999. MPCA explained that the Minnesota Legislature determined Minn. R. 7023.1010 through 7023.1105 to be obsolete and deleted or repealed the rules due to the state's termination of the vehicle inspection and maintenance program as a result of the area's attainment of the CO NAAQS. Therefore, in addition to Minn. R. 7023.1010 through 7023.1105, MPCA also requested that Minnesota Statutes 116.60 through 116.65, which comprised the vehicle inspection and maintenance program, be removed from the SIP. In its submittal MPCA states that the rules and the Statutes are no longer necessary as the area has achieved the NAAQS for CO. However, in their March 23, 1998, request to redesignate the Minneapolis/St. Paul CO nonattainment area to attainment, Minnesota retained the vehicle inspection and maintenance program as a contingency measure in the maintenance plan for the area. EPA approved the Minneapolis/St. Paul CO maintenance plan into the SIP as part of the October 29, 1999, redesignation of the area. Because the CO maintenance plan is still in effect for the Minneapolis/St. Paul area, EPA finds that the vehicle inspection and maintenance program (Minn. R. 7023.1010 through 7023.1105 and Minnesota Statutes 116.60 through 116.65) needs to be retained as part of the Minnesota SIP. Therefore EPA is disapproving the state's request to remove Minn. R. 7023.1010 through 7023.1105 and Minnesota Statutes 116.60 through 116.65 from the Minnesota SIP.

II. What action is EPA taking?

EPA is approving the request made by MPCA on May 5, 2008, to revise and update Minnesota's air rules in the Minnesota SIP. In addition, this action removes obsolete permit, portland cement plant and waste combustor rules from the SIP. EPA is not taking action on revisions to Minn. R. ch. 7007, Rules Governing Air Emission Permits, as the state withdrew this portion of their submittal from EPA consideration. EPA is also deferring rulemaking on changes to Minn. R. ch. 7002 and Minn. R. ch. 7008 until MPCA resubmits Minn. R. ch. 7007 for approval into the SIP. Finally, EPA is retaining the Minneapolis/St. Paul vehicle inspection and maintenance program as part of the Minnesota SIP. The codification of this rulemaking delineates the revised SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan amendment if relevant adverse written comments are filed. This rule will be effective October 11, 2011 without further notice unless we receive relevant adverse written comments by September 9, 2011. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective October 11, 2011.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements. 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 rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 October 11, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, New source review, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: July 29, 2011.

Susan Hedman,

Regional Administrator, Region 5.

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 Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (c) is amended by revising the entries for ''CHAPTER 7005 DEFINITIONS AND ABBREVIATIONS'', ''CHAPTER 7009 AMBIENT AIR QUALITY STANDARDS'', ''CHAPTER 7011 STANDARDS FOR STATIONARY SOURCES'', ''CHAPTER 7017 MONITORING AND TESTING REQUIREMENTS'', and ''CHAPTER 7019 EMISSION INVENTORY REQUIREMENTS'' to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MINNESOTA REGULATIONS

Minnesota citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
CHAPTER 7005 DEFINITIONS AND ABBREVIATIONS				
7005.0100	Definitions	11/19/07	08/10/11, [Insert page number where the document begins].	
7005.0110	Abbreviations	07/93–06/94	08/10/11, [Insert page number where the document begins].	18 SR 1412.
*	*	*	*	*
CHAPTER 7009 AMBIENT AIR QUALITY STANDARDS				
7009.0010	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7009.0020	Prohibited emissions	10/18/93	05/24/95, 60 FR 27411.	
7009.0050	Interpretation and measurement methodology, except for hydrogen sulfide.	06/01/99	08/10/11, [Insert page number where the document begins].	
7009.0060	Measurement methodology for hydrogen sulfide.	07/94–06/95	08/10/11, [Insert page number where the document begins].	19 SR 550.
7009.0070	Time of compliance	10/18/93	05/24/95, 60 FR 27411.	7.

EPA-APPROVED MINNESOTA REGULATIONS—Continued

Minnesota citation	Title/subject	State effective date	EPA approval date	Comments
7009.0080	State ambient air quality standards	06/01/99	08/10/11, [Insert page number where the document begins].	
	Air Pollution Episodes			
7009.1000	Air pollution episodes	03/18/96	08/10/11, [Insert page number where the document begins].	
7009.1010	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7009.1020	Episode levels	10/18/93	05/24/95, 60 FR 27411.	
7009.1030	Episode declaration	10/18/93	05/24/95, 60 FR 27411.	
7009.1040	Control actions	01/12/98	08/10/11, [Insert page number where the document begins].	
7009.1050	Emergency powers	10/18/93	05/24/95, 60 FR 27411.	
7009.1060	Table 1	10/18/93	05/24/95, 60 FR 27411	
7009.1070	Table 2: emission reduction objectives for particulate matter.	10/18/93	05/24/95, 60 FR 27411.	
7009.1080	Table 3: emission objectives for sulfur oxides	10/18/93	05/24/95, 60 FR 27411.	
7009.1090	Table 4: emission reduction objectives for nitrogen oxides.	10/18/93	05/24/95, 60 FR 27411.	
7009.1100	Table 5: emission reduction objectives for hydrocarbons.	10/18/93	05/24/95, 60 FR 27411.	
7009.1110	Table 6: emission reduction objectives for carbon monoxide.	10/18/93	05/24/95, 60 FR 27411.	
	Adoption of Federal Regulations			
7009.9000	Determining conformity of general Federal actions to state or Federal implementation plans.	11/20/95	04/23/97, 62 FR 19674.	
	CHAPTER 7011 STANDARDS FOR STATIONARY SOURCES			
Generally.				
7011.0010	Applicability of standards of performance	06/01/99	08/10/11, [Insert page number where the document begins].	
7011.0020	Circumvention	10/18/93	05/24/95, 60 FR 27411.	
	Control Equipment			
7011.0060	Definitions	11/19/07	08/10/11, [Insert page number where the document begins].	
7011.0061	Incorporation by reference	11/19/07	08/10/11, [Insert page number where the document begins].	
7011.0065	Applicability	11/19/07	08/10/11, [Insert page number where the document begins].	
7011.0070	Listed control equipment and control equipment efficiencies.	11/19/07	08/10/11, [Insert page number where the document begins].	
7011.0072	Requirements for certified hoods	11/19/07	08/10/11, [Insert page number where the document begins].	
7011.0075	Listed control equipment general requirements.	11/19/07	08/10/11, [Insert page number where the document begins].	
7011.0080	Monitoring and record keeping for listed control equipment.	11/19/07	08/10/11, [Insert page number where the document begins].	
	Emission Standards for Visible Air Contaminants			
7011.0100	Scope	10/18/93	05/24/95, 60 FR 27411.	
7011.0105	Visible emission restrictions for existing facilities.	07/13/98	08/10/11, [Insert page number where the document begins].	
7011.0110	Visible emission restrictions for new facilities	01/12/98	08/10/11, [Insert page number where the document begins].	
7011.0115	Performance tests	07/93–06/94	08/10/11, [Insert page number where the document begins].	18 SR 1412.
	Control of Fugitive Pariculate Matter			
7011.0150	Preventing particulate matter from becoming airborne.	03/18/96	08/10/11, [Insert page number where the document begins].	
	Indirect Heating Fossil-Fuel-Burning Equipment			
7011.0500	Definitions	10/18/93	05/24/95, 60 FR 27411.	

EPA-APPROVED MINNESOTA REGULATIONS—Continued

Minnesota citation	Title/subject	State effective date	EPA approval date	Comments
7011.0505	Determination of applicable standards of performance.	10/18/93	05/24/95, 60 FR 27411.	
7011.0510	Standards of performance for existing indirect heating equipment.	07/13/98	08/10/11, [Insert page number where the document begins].	
7011.0515	Standards of performance for new indirect heating equipment.	07/13/98	08/10/11, [Insert page number where the document begins].	
7011.0520	Allowance for stack height for indirect heating equipment.	10/18/93	05/24/95, 60 FR 27411.	
7011.0525	High heating value	10/18/93	05/24/95, 60 FR 27411.	
7011.0530	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.0535	Performance test procedures	01/12/98	08/10/11, [Insert page number where the document begins].	
7011.0540	Derate	10/18/93	05/24/95, 60 FR 27411.	
7011.0545	Table I: existing indirect heating equipment	10/18/93	05/24/95, 60 FR 27411.	
7011.0550	Table II: new indirect heating equipment	10/18/93	05/24/95, 60 FR 27411.	
7011.0551	Record keeping and reporting for indirect heating units combusting solid waste.	05/11/98	08/10/11, [Insert page number where the document begins].	
7011.0553	Nitrogen oxides emission reduction requirements for affected sources.	07/94–06/95	08/10/11, [Insert page number where the document begins].	19 SR 1666.
Direct Heating Fossil-Fuel-Burning Equipment				
7011.0600	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.0605	Determination of applicable standards of performance.	10/18/93	05/24/95, 60 FR 27411.	
7011.0610	Standards of performance for fossil-fuel-burning direct heating equipment.	07/13/98	08/10/11, [Insert page number where the document begins].	
7011.0615	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.0620	Performance test procedures	01/12/98	08/10/11, [Insert page number where the document begins].	
7011.0625	Record keeping and reporting for direct heating units combusting solid waste.	05/11/98	08/10/11, [Insert page number where the document begins].	
Industrial Process Equipment				
7011.0700	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.0705	Scope	10/18/93	05/24/95, 60 FR 27411.	
7011.0710	Standards of performance for pre-1969 industrial process equipment.	07/13/98	08/10/11, [Insert page number where the document begins].	
7011.0715	Standards of performance for post-1969 industrial process equipment.	10/18/93	05/24/95, 60 FR 27411.	
7011.0720	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.0725	Performance test procedures	07/93–06/94	08/10/11, [Insert page number where the document begins].	18 SR 1412.
7011.0730	Table 1	11/19/07	08/10/11, [Insert page number where the document begins].	
7011.0735	Table 2	10/18/93	05/24/95, 60 FR 27411.	
Concrete Manufacturing Plant Standards Of Performance				
7011.0850	Definitions	04/21/03	08/10/11, [Insert page number where the document begins].	
7011.0852	Standards of performance for concrete manufacturing plants.	11/23/98	08/10/11, [Insert page number where the document begins].	
7011.0854	Concrete manufacturing plant control equipment requirements.	11/23/98	08/10/11, [Insert page number where the document begins].	
7011.0857	Preventing particulate matter from becoming airborne.	11/23/98	08/10/11, [Insert page number where the document begins].	
7011.0858	Noise	11/23/98	08/10/11, [Insert page number where the document begins].	
7011.0859	Shutdown and breakdown procedures	11/23/98	08/10/11, [Insert page number where the document begins].	
7011.0865	Incorporations by reference	04/21/03	08/10/11, [Insert page number where the document begins].	
7011.0870	Stage-one vapor recovery	04/21/03	08/10/11, [Insert page number where the document begins].	
Hot Mix Asphalt Plants				
7011.0900	Definitions	06/01/99	08/10/11, [Insert page number where the document begins].	

EPA-APPROVED MINNESOTA REGULATIONS—Continued

Minnesota citation	Title/subject	State effective date	EPA approval date	Comments
7011.0903	Compliance with ambient air quality standards	04/15/96	08/10/11, [Insert page number where the document begins].	
7011.0905	Standards of performance for existing asphalt concrete plants.	04/15/96	08/10/11, [Insert page number where the document begins].	
7011.0911	Maintenance of dryer burner	04/15/96	08/10/11, [Insert page number where the document begins].	
7011.0913	Hot mix asphalt plant materials, fuels, and additives operating requirements.	05/24/04	08/10/11, [Insert page number where the document begins].	
7011.0917	Asphalt plant control equipment requirements	11/29/04	08/10/11, [Insert page number where the document begins].	
7011.0920	Performance tests	04/15/96	08/10/11, [Insert page number where the document begins].	
7011.0922	Operational requirements and limitations from performance tests.	04/15/96	08/10/11, [Insert page number where the document begins].	
Bulk Agricultural Commodity Facilities				
7011.1000	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1005	Standards of performance for dry bulk agricultural commodity facilities.	11/19/07	08/10/11, [Insert page number where the document begins].	
7011.1010	Nuisance	10/18/93	05/24/95, 60 FR 27411.	
7011.1015	Control requirements schedule	10/18/93	05/24/95, 60 FR 27411.	
Coal Handling Facilities				
7011.1100	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1105	Standards of performance for certain coal handling facilities.	01/12/98	08/10/11, [Insert page number where the document begins].	
7011.1110	Standards of performance for existing outstate coal handling facilities.	01/12/98	08/10/11, [Insert page number where the document begins].	
7011.1115	Standards of performance for pneumatic coal-cleaning equipment and thermal dryers at any coal handling facility.	10/18/93	05/24/95, 60 FR 27411.	
7011.1120	Exemption	10/18/93	05/24/95, 60 FR 27411.	
7011.1125	Cessation of operations	10/18/93	05/24/95, 60 FR 27411.	
7011.1135	Performance test procedures	07/93–06/94	08/10/11, [Insert page number where the document begins].	18 SR 1412.
7011.1140	Dust suppressant agents	10/18/93	05/24/95, 60 FR 27411.	
Waste Combustors				
7011.1201	Definitions	05/11/98	08/10/11, [Insert page number where the document begins].	
7011.1205	Incorporations by reference	05/11/98	08/10/11, [Insert page number where the document begins].	
Incinerators				
7011.1300	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1305	Standards of performance for existing sewage sludge incinerators.	07/13/98	08/10/11, [Insert page number where the document begins].	
7011.1310	Standards of performance for new sewage sludge incinerators.	01/12/98	08/10/11, [Insert page number where the document begins].	
7011.1315	Monitoring of operations	10/18/93	05/24/95, 60 FR 27411.	
7011.1320	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.1325	Performance test procedures	07/93–06/94	08/10/11, [Insert page number where the document begins].	18 SR 1412.
Petroleum Refineries				
7011.1400	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1405	Standards of performance for existing affected facilities at petroleum refineries.	07/13/98	08/10/11, [Insert page number where the document begins].	
7011.1410	Standards of performance for new affected facilities at petroleum refineries.	07/13/98	08/10/11, [Insert page number where the document begins].	
7011.1415	Exemptions	01/12/98	08/10/11, [Insert page number where the document begins].	
7011.1420	Emission monitoring	03/01/99	08/10/11, [Insert page number where the document begins].	
7011.1425	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	

EPA-APPROVED MINNESOTA REGULATIONS—Continued

Minnesota citation	Title/subject	State effective date	EPA approval date	Comments
7011.1430	Performance test procedures	07/93–06/94	08/10/11, [Insert page number where the document begins].	18 SR 1412.
	Liquid Petroleum And Volatile Organic Liquid Storage Vessels			
7011.1500	Definitions	06/01/99		
7011.1505	Standards of performance for storage vessels	10/18/93	05/24/95, 60 FR 27411.	
7011.1510	Monitoring of operations	10/18/93	05/24/95, 60 FR 27411.	
7011.1515	Exception	10/18/93	05/24/95, 60 FR 27411.	
	Sulfuric Acid Plants			
7011.1600	Definitions	01/12/98		
7011.1605	Standards of performance of existing sulfuric acid production units.	10/18/93	05/24/95, 60 FR 27411.	
7011.1615	Continuous emission monitoring	03/01/99	08/10/11, [Insert page number where the document begins].	
7011.1620	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.1625	Performance test procedures	*1	08/10/11, [Insert page number where the document begins].	
7011.1630	Exceptions	07/93–06/94	08/10/11, [Insert page number where the document begins].	18 SR 1412.
	Nitric Acid Plants			
7011.1700	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1705	Standards of performance for existing nitric acid production units.	01/12/98	08/10/11, [Insert page number where the document begins].	
7011.1715	Emission monitoring	03/01/99	08/10/11, [Insert page number where the document begins].	
7011.1720	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.1725	Performance test procedures	07/93–06/94	08/10/11, [Insert page number where the document begins].	18 SR 1412.
	Emission Standards For Inorganic Fibrous Materials			
7011.2100	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.2105	Spraying of inorganic fibrous materials	10/18/93	05/24/95, 60 FR 27411.	
	Stationary Internal Combustion Engines			
7011.2300	Standards of performance for stationary internal combustion engines.	02/21/95	08/10/11, [Insert page number where the document begins].	
	CHAPTER 7017 MONITORING AND TESTING REQUIREMENTS			
7017.0100	Establishing violations	02/28/95	10/14/97, 62 FR 53239.	
	Compliance Assurance Monitoring			
7017.0200	Incorporation by reference	05/24/04	08/10/11, [Insert page number where the document begins].	
	Continuous Monitoring Systems			
7017.1002	Definitions	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1004	Applicability	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1006	Requirement to install monitor	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1010	Incorporation of Federal monitoring requirements by reference.	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1020	Continuous emission monitoring by affected sources.	07/94–06/95	08/10/11, [Insert page number where the document begins].	19 SR 1666.
7017.1030	Agency access to witness or conduct tests	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1035	Testing required	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1040	Installation requirements	03/01/99	08/10/11, [Insert page number where the document begins].	

EPA-APPROVED MINNESOTA REGULATIONS—Continued

Minnesota citation	Title/subject	State effective date	EPA approval date	Comments
7017.1050	Monitor certification and recertification test	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1060	Precertification test requirements	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1070	Certification test procedures	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1080	Certification test report requirements	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1090	Monitor operational requirements	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1100	Evidence of noncompliance	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1110	Excess emissions reports	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1120	Submittals	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1130	Record keeping	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1135	Applicability	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1140	CEMS design requirements	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1150	CEMS testing company requirement	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1160	CEMS monitoring data	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1170	Quality assurance and control requirements for CEMS.	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1180	Quality control reporting and notification requirements for CEMS.	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1185	Applicability	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1190	COMS design requirements	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1200	COMS monitoring data	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1210	Quality assurance and control requirements for COMS.	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.1220	Quality assurance and control reporting requirements for COMS.	03/01/99	08/10/11, [Insert page number where the document begins].	
	Performance Tests			
7017.2001	Applicability	07/13/98	08/10/11, [Insert page number where the document begins].	
7017.2005	Definitions	11/19/07	08/10/11, [Insert page number where the document begins].	
7017.2010	Incorporation of test methods by reference	07/13/98	08/10/11, [Insert page number where the document begins].	
7017.2015	Incorporation of Federal testing requirements by reference.	07/13/98	08/10/11, [Insert page number where the document begins].	
7017.2018	Submittals	05/24/04	08/10/11, [Insert page number where the document begins].	
7017.2020	Performance tests general requirements	11/19/07	08/10/11, [Insert page number where the document begins].	
7017.2025	Operational requirements and limitations	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.2030	Performance test pretest requirements	03/01/99	08/10/11, [Insert page number where the document begins].	
7017.2035	Performance test reporting requirements	07/13/98	08/10/11, [Insert page number where the document begins].	
7017.2040	Certification of performance test results	07/13/98	05/13/02, 67 FR 31963	
7017.2045	Quality assurance requirements	07/13/98	08/10/11, [Insert page number where the document begins].	
7017.2050	Performance test methods	07/13/98	08/10/11, [Insert page number where the document begins].	
7017.2060	Performance test procedures	07/13/98	08/10/11, [Insert page number where the document begins].	

EPA-APPROVED MINNESOTA REGULATIONS—Continued

Minnesota citation	Title/subject	State effective date	EPA approval date	Comments
	CHAPTER 7019 EMISSION INVENTORY REQUIREMENTS			
7019.1000	Shutdowns and breakdowns	06/01/99	08/10/11, [Insert page number where the document begins].	
7019.3000	Emission inventory	11/19/07	08/10/11, [Insert page number where the document begins].	
7019.3020	Calculation of actual emissions for emission inventory.	11/19/07	08/10/11, [Insert page number where the document begins].	
7019.3030	Method of calculation	11/19/07	08/10/11, [Insert page number where the document begins].	
7019.3040	Continuous emission monitor (CEM) data	03/01/99	08/10/11, [Insert page number where the document begins].	
7019.3050	Performance test data	11/19/07	08/10/11, [Insert page number where the document begins].	
7019.3060	Volatile organic compound (VOC) material balance.	1997	08/10/11, [Insert page number where the document begins].	21 SR 165.
7019.3070	So material balance	1997	08/10/11, [Insert page number where the document begins].	21 SR 165.
7019.3080	Emission factors	11/19/07	08/10/11, [Insert page number where the document begins].	
7019.3090	Enforceable limitations	1997	08/10/11, [Insert page number where the document begins].	21 SR 165.
7019.3100	Facility proposal	1997	08/10/11, [Insert page number where the document begins].	21 SR 165.
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[FR Doc. 2011–20210 Filed 8–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–0534–201113; FRL–9449–8]

Approval and Promulgation of Implementation Plans North Carolina: Prevention of Significant Deterioration and Nonattainment New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina in three submittals dated November 30, 2005, March 16, 2007, and June 20, 2008. The revisions modify North Carolina's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting regulations in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the ''2002 NSR Reform Rules''). In addition, the revisions address an update to the NSR regulations promulgated by EPA on November 29, 2005 (hereafter referred to as the Ozone Implementation NSR Update) relating to the implementation of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). EPA proposed to approve these revisions on September 9, 2008, and received adverse comments. In this final action, EPA is also responding to the adverse comments.

DATES: This rule will be effective September 9, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2005–0534. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the North Carolina SIP, contact Ms. Twunjala Bradley, 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. Ms. Bradley's telephone number is (404) 562–9352; *e-mail address: bradley.twunjala@epa.gov.* For information regarding NSR Reform, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adam's *telephone number is:* (404) 562–9214; *e-mail address: adams.yolanda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, references to ''EPA,'' ''we,'' ''us,'' or ''our,'' are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

I. What action is EPA taking?
II. What is the background for EPA's action?
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is taking final action to approve revisions to the North Carolina SIP regarding the State's NSR programs. On November 30, 2005, March 16, 2007, and June 20, 2008, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), submitted revisions to the North Carolina SIP. The SIP revisions consist of changes to North Carolina Air Quality Rules, Subchapter 2D. Specifically, the November 30, 2005, proposed SIP revision includes changes to Regulation 15A North Carolina Administrative Code (NCAC) 2D .0531, ''Sources in Nonattainment Areas.'' The March 16, 2007, proposed SIP revision includes changes to Regulation 15A NCAC 2D .0530, ''Prevention of Significant Deterioration.'' The June 20, 2008, proposed SIP revision [1] includes additional changes to Regulations 15A NCAC 2D .0530, and .0531. NC DENR submitted these revisions in response to EPA's December 31, 2002, November 7, 2003, and November 29, 2005, revisions to the federal NSR program. Pursuant to section 110 of the Clean Air Act (CAA or Act), EPA is taking final action to approve these SIP revisions.

II. What is the background for EPA's action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.'' [2] For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002). For information on the subsequent revisions to these rules, see *http://www.epa.gov/nsr.*

Also relevant to NC DENR's SIP revisions, on November 29, 2005 (70 FR 71612), EPA promulgated implementation provisions for the 1997 8-hour NAAQS which made changes to the NSR regulations. These included, among other changes, a requirement that emissions of nitrogen oxides (NOx) be considered a precursor to ozone. These rules are commonly referred to as the Ozone Implementation NSR Update.

On November 30, 2005, March 16, 2007, and June 20, 2008, NC DENR submitted SIP revisions to EPA for the purpose of revising the State's NSR permitting provisions to adopt EPA's 2002 NSR Reform Rules and the Ozone Implementation NSR Update. These SIP revisions incorporate by reference (IBR) the federal NSR rules at 40 CFR 51.166 and 51.165, as amended on June 13, 2007, with several changes. See EPA's analysis of the State's NSR SIP revisions in the September 9, 2008, proposed rulemaking. *See* 73 FR 52226. Copies of North Carolina's revised NSR rules, as well as the State's Technical Support Document, can be obtained from the docket, as discussed in the **ADDRESSES** section above.

On September 9, 2008 (73 FR 52226), EPA proposed to approve the above-referenced SIP revisions. In response to

[1] The June 20, 2008, SIP revision also included changes to NCAC Subchapter 2D, Section .2400, Clean Air Interstate Rule (CAIR). EPA took final action approving the CAIR portion of the June 20, 2008, SIP revision on November 30, 2009. *See* 74 FR 62496.

[2] For more information on the 2002 NSR Reform Rules, and its supporting technical documents, see, *http://www.epa.gov/nsr/actions.html#2002* (last visited February 16, 2011).

a request for an extension of the public comment period for EPA's September 9, 2008, proposed rulemaking, EPA extended the public comment period through November 10, 2008 (73 FR 58084). EPA received adverse comments from the National Resource Defense Council (NRDC) and the Duke Energy Corporation (DEC) regarding North Carolina's NSR Reform Rule changes. No adverse comments were received for North Carolina's rule changes to adopt the provisions of the Ozone Implementation NSR Update. EPA's response to these comments is below in section III of this final rulemaking. EPA's analysis of the State's NSR SIP revisions is contained in the September 9, 2008, proposed rulemaking, and briefly summarized as follows. *See* 73 FR 52226.

EPA's evaluation of the North Carolina SIP submittals included a line-by-line comparison of the proposed revisions with the federal requirements. As a general matter, state agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. As mentioned above, North Carolina chose to IBR the federal rules with several changes. The definition of ''baseline actual emissions'' at subchapter 2D .0530(b)(1) and .0531(a)(1) was changed to remove the provision allowing emissions units that are not electric utility steam generating units (EUSGUs) to look back 10 years to select the baseline period. North Carolina rules treat EUSGUs and non-EUSGUs the same by allowing a look back of only 5 years. However, North Carolina rules provide the option of allowing a different time period, not to exceed 10 years, if the owner or operator demonstrates that it is more representative of normal source operation. In addition, North Carolina rules require EUSGUs to adjust downward the baseline emissions to account for reductions required under the North Carolina Clean Smokestack Act (CSA) (a state law mandating emission reductions from certain EUSGUs). North Carolina's rules also include some changes from the federal rules regarding recordkeeping and reporting; plant-wide applicability limits; and clarifications regarding the use of emissions reductions from the CSA. One such clarification is that any allowances for emissions reductions achieved under the CSA are not available to the subject facilities, nor any other sources, and may not be used to offset emissions and avoid installation of best available control technology or lowest achievable emissions rate on new natural gas-fired units. A full discussion of the differences between the North Carolina rules and the federal rules is available in the proposal action. *See* 73 FR 52226.

III. Response to Comments

EPA received two sets of adverse comments on the September 9, 2008, proposed rulemaking to approve North Carolina's November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions. Specifically, adverse comments were received from NRDC and DEC. A complete set of these comments is provided in the docket for today's rulemaking. EPA's response to these adverse comments is provided below.

A. EPA's Response to NRDC Comments

NRDC commented on EPA's proposed rulemaking to approve North Carolina's NSR rule changes. Specifically, NRDC primarily commented on the requirements of the federal NSR rules, not North Carolina's application of the federal requirements in its own rules. Notably, NRDC participated in litigation challenging EPA's 2002 promulgation of the NSR Reform Rules, where similar arguments were made by NRDC and dismissed by the D.C. Circuit Court. *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). NRDC's comments, including exhibits, do not raise any specific concerns with North Carolina's rules, but rather, reiterate arguments made by NRDC to the D.C. Circuit regarding sections 110(l) and 193 of the CAA.[3]

While NRDC's comments provide citations to eleven portions of the North Carolina rules, the comments make no attempt to specifically explain or demonstrate how those identified provisions are inconsistent with either section 110(l) or section 193 of the CAA. Furthermore, NRDC provides no evidence supporting its allegations that approval of the specific provisions would result in a violation of the CAA or otherwise be ''arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.'' NRDC Comments at 2.

The NRDC comments include a list of 31 exhibits which the comment letter incorporates by reference into the comments. NRDC Comments at 1. The 31 exhibits appear to all be related to the DC Circuit Court case *New York* v. *EPA,* and were either submitted to that Court for review, or are relevant to that adjudication. To the extent that these exhibits were provided to the DC Circuit, those issues were previously resolved by the Court and/or already responded to by EPA in its responsive court papers. Any other documents included in the 31 exhibits that were not provided to the DC Circuit Court do not provide EPA with any comments specific to the North Carolina rules at issue.

Despite the lack of North Carolina-specific discussion in NRDC's letter, EPA has responded to the few comments that appear related to the September 9, 2008, proposed rulemaking to approve North Carolina's SIP revision pertaining to EPA's 2002 NSR Reform Rules.[4]

Comment 1: In summary, NRDC stated that finalizing the EPA September 9, 2008, proposed rulemaking to approve North Carolina's November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions would violate section 110(l) of the Act. NRDC comments at 1–6. As support for its conclusion, NRDC asserted that ''[t]he 2002 NSR Reform Rule provisions that were not vacated by the DC Circuit in New York v. EPA [citation omitted] allow previously-prohibited emissions-increases to occur.'' NRDC comments at 4. Further, that ''North Carolina nevertheless has made no 'demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements.' '' As a result, NRDC stated that, ''it cannot be said of North Carolina's plan that it 'will cause no degradation of air quality.' '' NRDC comments at 5. NRDC also stated that EPA has not made any findings that North Carolina's rule will not cause degradation of air quality or interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirements of the CAA. NRDC comments at 5.

Response 1: EPA's 2002 NSR Reform Rules were upheld by the DC Circuit

[3] NRDC notes that, ''[t]he 2002 rule provisions considered by the D.C. Circuit in *New York* v. *EPA* were EPA regulations, not state ones. The court thus had no occasion to decide whether EPA could approve any state's versions of any of the 2002 rule provisions consistently with section 110(l) of the Act.'' NRDC Comments at 3. The North Carolina rules at issue here track the federally approved rules (upheld by the DC Circuit) (which NRDC admits—NRDC Comments at 4) and NRDC supported all its comments with information related to the challenge of EPA's 2002 NSR Reform Rules. NRDC provided no North Carolina-specific support for its comments.

[4] Similar comments were filed by Sierra Club on the Wisconsin NSR Reform SIP revision. EPA's response to comments in that matter may be reviewed at *http://www.regulations.gov*—document ID EPA–R05–OAR–2006–0609–0009. EPA was successful in defending a challenge to approval of Wisconsin's NSR Reform SIP revision. See *NRDC* v. *Jackson,* Nos. 09–1405 & 10–2123 (7th Cir., Jun. 16, 2011), 2011 US App LEXIS 12116.

Court which reviewed them, with the exception of the pollution control project and clean unit provisions (and the remanded matters). The three significant changes in NSR Reform that were upheld by the DC Circuit were: (1) Plant-wide applicability limits (PALs), (2) the 2-in-10 baseline, and (3) the actual-to-projected actual emission test. The Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis) discussed each of these three changes individually, and addresses some of the issues raised by NRDC.

With regard to PALs, the Supplemental Analysis explained, ''[t]he EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits.'' Supplemental Analysis at 6. EPA further explained that,

> ''Although it is impossible to predict how many and which sources will take PALs, and what actual reductions those sources will achieve for what pollutants, we believe that, on a nationwide basis, PALs are certain to lead to tens of thousands of tons of reductions of [volatile organic compounds] from source categories where frequent operational changes are made, where these changes are time-sensitive, and where there are opportunities for economical air pollution control measures. These reductions occur because of the incentives that the PAL creates to control existing and new units in order to provide room under the cap to make necessary operational changes over the life of the PAL.''

Supplemental Analysis at 7. The Supplemental Analysis, and particularly Appendix B, provided additional details regarding EPA's analysis of PALs and anticipated associated emission decreases.

With regard to the 2-in-10 baseline, EPA concluded that, ''[t]he EPA believes that the environmental impact from the change in baseline EPA is now finalizing will not result in any significant change in benefits derived from the NSR program.'' Supplemental Analysis at 13. This is mainly because ''the number of sources receiving different baselines likely represents a very small fraction of the overall NSR permit universe, excludes new sources and coal fired power plants, and because the baseline may shift in either direction, we conclude that any overall consequences would be negligible.'' Supplemental Analysis at 14. Additional information regarding the 2-in-10 baseline changes is available in the Supplemental Analysis, Appendix F.

With regard to the actual-to-projected actual test, EPA concluded, ''we believe that the environmental impacts of the switch to the actual-to-projected actual test are likely to be environmentally beneficial. However, as with the change to the baseline, we believe the vast majority of sources, including new sources, new units, electric utility steam generating units, and units that actually increase emissions as a result of a change, will be unaffected by this change. Thus, the overall impacts of the NSR changes are likely to be environmentally beneficial, but only to a small extent.'' Supplemental Analysis at 14 (see also Supplemental Analysis Appendix G).

Section 110(l) of the CAA states, in relevant part, that ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this chapter.'' CAA, 42 U.S.C. 7410(l). In ''Approval and Promulgation of Implementation Plans; New Source Review; State of Nevada, Clark County Department of Air Quality and Environmental Management,'' 69 FR 54006 (September 7, 2004), EPA stated that section 110(l) does not preclude SIP relaxations. Rather, EPA stated that section 110(l) only requires that the ''relaxations not interfere with specified requirements of the Act including requirements for attainment and reasonable further progress,'' and that, therefore, a state can relax its SIP provisions if it is able to show that it can attain or maintain the NAAQS and meet any applicable reasonable further progress goals or other specific requirements. *See* 69 FR at 54011–12.

North Carolina's November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions track the federal NSR Reform Rules, with changes, as described in North Carolina's SIP revisions. EPA evaluated North Carolina's rules consistent with its evaluation of the federal rules, and determined that North Carolina's rules were equivalent to or more stringent than the 2002 NSR Reform Rules. Overall, as summarized above, EPA expects that changes in air quality as a result of implementing North Carolina's rules as updated by the aforementioned SIP revisions is consistent with EPA's position on the federal NSR Reform Rules—that there will be somewhere between neutral and providing modest contribution to reasonable further progress between the NSR Reform and pre-Reform provisions. EPA's analysis for the environmental impacts of the three components of the NSR Reform rules (discussed earlier) is informative of how North Carolina's adoption of NSR Reform (based on the federal rules) will affect emissions. EPA has no reason to believe that the environmental impacts will be different from those discussed in the Supplemental Analysis for the NSR Reform Rules, and thus, approval of the November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions related to NSR Reform would not be contrary to section 110(l) of the CAA.[5]

Comment 2: NRDC cites to eleven general portions of North Carolina's rules as provisions that would violate section 110(l). These provisions are: Regulation 15A North Carolina Administrative Code (NCAC), Subchapter 2D .0530, subsections (a), (b), (g), (i), (u), and (v) (from North Carolina's PSD rules); and Subchapter 2D .0531, subsections (a), (c), (n), (o), and (p) (from North Carolina's NNSR rules).

Response 2: With regard to the comments, NRDC provides no evidence supporting its contention that these specific provisions violate section 110(l). The first provision noted by NRDC, 15A NCAC 02D .0530(a) states the general purpose of the rule to implement North Carolina's PSD program, which does include some changes per the SIP revisions at issue. Nonetheless, without further specificity, it is not clear why or how NRDC believes this provision is a violation of section 110(l). In addition, NRDC has provided no North Carolina-specific documentation that indicates that EPA's analysis and conclusions regarding the impact of NSR Reform, in the Supplemental Analysis, is not applicable to North Carolina's rules, which are equivalent to or more stringent than the federal rules.

In evaluating North Carolina's November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions, EPA compared North Carolina's rules with the existing federal rules and determined that North Carolina's rules were equivalent to or more stringent than the NSR Reform (federal) rules. EPA also considered North Carolina's changes to the federal NSR Reform provisions. These changes were discussed in EPA's September 9, 2008, proposed rulemaking to approve North Carolina's three SIP revisions related to NSR Reform, and are discussed in North Carolina's final submittal (including

[5] In reviewing EPA's approval of a Wisconsin SIP amendment that adopted the 2002 NSR Reform rules, a federal appeals court recently held that EPA could rely on the Supplemental Analysis in support of its approval. See *NRDC* v. *Jackson,* Nos. 09–1405 & 10–2123 (7th Cir., Jun. 16, 2011), 2011 US App LEXIS 12116.

North Carolina's response to comments received during the State public process), which are included in the docket for today's final action. As was explained in EPA's September 9, 2008, proposed rulemaking, EPA agrees with North Carolina's conclusion that the changes are at least equivalent to the Federal rules. *See* 73 FR 52228–52229. EPA also considered the Supplemental Analysis in reviewing North Carolinas's three SIP revisions related to NSR Reform, and NRDC's comments. EPA concluded that approval of North Carolina's SIP revisions would not be contrary to section 110(l) of the CAA.

Absent more explicit information demonstrating that North Carolina's plan for implementation of a specific provision of its rules would interfere with any applicable requirement of the CAA and thus should be disapproved under section 110(l), EPA is concluding that North Carolina's Technical Support Document and the Supplemental Analysis supports approval. As a result, there is no basis on which to determine that approval of North Carolina's rules would violate section 110(l).

Comment 3: NRDC states that NSR is a ''control requirement'' and thus the requirements of section 193 apply to the NSR rules at issue in North Carolina's November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions. NRDC comments at 7. NRDC further alleges that North Carolina's revisions ''ensure that emissions will not be reduced as much as under the pre-existing rules. In fact, the modifications allow emissions to increase in North Carolina's nonattainment areas.'' NRDC comments at 9. Finally, NRDC states that ''because section 193 lies within part D,'' ''if EPA approves North Carolina's revised plan, that action will additionally exceed the agency's authority under section 110(k)(3) and violate section 100(l).'' (Note, the last citation to 100(l) appears to be a typographical error and should read 110(l).) NRDC comments at 10.

Response 3: EPA's response to the section 193 issues raised by NRDC involves many of the same elements of the response above to the section 110(l) comments, which is also incorporated by reference here. Section 193 states (in relevant part), that ''[n]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.''

Assuming for purposes of this discussion that section 193 does apply to the instant action, as was discussed earlier in this notice, EPA has previously determined and explained in the Supplemental Analysis, that implementation of the 2002 NSR Reform Rule provisions still in effect (that is, those not vacated by the DC Circuit) are expected to have at least a neutral environmental benefit. While North Carolina's rules do include some changes from the Federal rules, in the September 9, 2008, proposed rulemaking, EPA explained the basis for its evaluation that the differences do not make North Carolina's NSR program less stringent than the federal program. EPA has no information indicating that findings associated with EPA's Supplemental Analysis would not apply in North Carolina—that is, that North Carolina's SIP revisions would have at least a neutral environmental benefit. *See e.g., NRDC* v. *Jackson,* Nos. 09–1405 & 10–2123 (7th Cir., Jun. 16, 2011), 2011 US App LEXIS 12116 (upholding EPA's reliance on the Supplemental Analysis where there was no information indicating an alternative outcome or analysis). Therefore, even if section 193 did apply to this action, EPA does not agree with commenter's assertions that the SIP revisions approved in this action raise a section 193 concern.

In addition, the core of NRDC's argument seems to revolve around the DC Circuit Court decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) (finding that NSR associated with the 1-hour ozone NAAQS included control requirements). At issue in *South Coast* v.*EPA* was EPA's determination regarding the revocation of the entire 1-hour ozone program (and corresponding SIP elements), including all the 1-hour nonattainment NSR elements, and whether such elements would continue to be required as part of SIPs implementing the new (at that time) 8-hour ozone NAAQS. The facts in the *South Coast* v. *EPA* case are distinguishable from the instant matter where the North Carolina SIP is merely being updated to include changes to the Federal NSR program. EPA is not removing the entirety of North Carolina's NNSR program from the SIP as it pertains to a particular NAAQS. Rather, EPA is simply approving North Carolina's SIP revisions that adopt rules equivalent to or more stringent than the federal rules; and as discussed earlier in this notice, EPA developed a Supplemental Analysis to support adoption of the federal rules. The North Carolina SIP will continue to operate with the full suite of NSR related elements, including a comprehensive minor source program.

B. EPA's Response to DEC Comments

DEC also commented on EPA's September 9, 2008, proposed rulemaking to approve North Carolina's NSR rule. DEC primarily commented on the requirements that electric utilities adjust downward the baseline emissions to account for reductions achieved and paid for as a result of the North Carolina CSA. Below summarizes DEC's comment and EPA's response.

Comment 4: DEC indicated that EPA should not approve these provisions into North Carolina's SIP because: (1) They are not required by the CAA and the federal NSR regulations; (2) they have nothing to do with air quality concerns; and (3) the General Assembly of North Carolina adopted legislation which provides specific exceptions from the requirement to adjust baseline emissions downward based on the CSA.

Response 4: As a point of background, on August 21, 2009, North Carolina provided a SIP revision to EPA requesting that EPA incorporate the provisions of the CSA into the SIP. The submittal was necessary to ensure attainment and maintenance of the NAAQS within North Carolina (North Carolina has relied, and continues to rely, on the CSA reductions to demonstrate attainment with more than one NAAQS). As part of redesignation submittals for at least two areas in North Carolina, for the 1997 annual $PM_{2.5}$ NAAQS, North Carolina is relying on the CSA as containing ''permanent and enforceable'' measures that ensure maintenance for that NAAQS. That reliance necessitated that North Carolina submit to EPA the CSA for approval into the SIP. On June 22, 2011, EPA proposed to approve the CSA into the North Carolina SIP. *See* 76 FR 36468.

As was explained in the proposal action, North Carolina's rules include a requirement that EUSGUs adjust downward the baseline emissions to account for reductions required under the North Carolina Clean Smokestack Act. DEC's comments appear to suggest that because the CSA reductions are not required, this provision should not be approved into the SIP. Further, that the North Carolina legislature took action to eliminate this provision for at least a certain period of time. Consistent with the background information provided above, because North Carolina is in fact relying on the CSA reductions for attainment and maintenance of NAAQS for various areas around North Carolina, the provision is actually necessary to

ensure that the reductions remain permanent and enforceable. While there remains some flexibility in how those reductions are achieved per the CSA, once achieved, they must be permanent.

With regard to the action taken by the legislature on July 17, 2006 (the text of which DEC included as part of its comments), the language itself in Senate Bill 1587 only applies between April 21, 2005, and August 1, 2006. Because that time period has lapsed, there is nothing apparent in Senate Bill 1587 that could impact approval of the SIP revisions currently being approved today. The comment letter does not explain why a provision that lapsed on August 1, 2006, would apply to today's rulemaking and PSD applicability going forward from the effective date of today's rule. As a general matter, EPA does not necessarily agree with DEC's legal arguments; however, given that Senate Bill 1587 does not apply currently, these differences need not be resolved at this time. The NSR reform rules being approved today would apply to the facilities at issue under the CSA once today's action is final and effective, per the provisions of the State rules now being incorporated into the SIP.

IV. Final Action

EPA is taking final action to approve revisions to the North Carolina SIP for Regulations 15A NCAC 2D .0530 and .0531, as submitted by the NC DENR on November 30, 2005, March 16, 2007, and June 20, 2008. These SIP revisions address changes to North Carolina's PSD and NNSR programs. EPA is approving these revisions into the North Carolina SIP because they are consistent with section 110 of the CAA and its implementing regulations.

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in 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 October 11, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 25, 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 II—North Carolina

■ 2. Section 52.1770(c), Table 1, is amended under Subchapter 2D, Section .0500, by revising the entries for ''Sect .0530'' and ''Sect .0531'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
* *	*	*	*	* *
Section .0500 Emission Control Standards				
* *	*	*	*	* *
Sect .0530	Prevention of Significant Deterioration.	5/1/2008	8/10/2011 [Insert citation of publication].	15 NCAC .0530 incorporates by reference the regulations found at 40 CFR 51.166, with changes, as of June 13, 2007. This EPA action is approving the incorporation by reference with the exception of the phrase ''except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,'' (as amended at 40 CFR 51.166(b)(1)(i)(*a*), (b)(1)(iii)(*t*), and (i)(1)(ii)(*t*).
Sect .0531	Sources in Nonattainment Areas.	5/1/2008	8/10/2011 [Insert citation of publication].	15 NCAC .0531 incorporates by reference the regulations found at 40 CFR 51.165, with changes, as of June 13, 2007. This EPA action is approving the incorporation by reference with the exception of the phrase ''except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,'' (as amended at 40 CFR 51.165(a)(1)(iv)(C)(*20*) and (a)(4)(xx).
* *	*	*	*	* *

* * * * *

[FR Doc. 2011–20167 Filed 8–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0629; FRL–8882–5]

Import Tolerances; Order Denying ABC's Petition to Revoke Import Tolerances for Various Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order.

SUMMARY: In this Order, EPA denies a petition requesting that EPA revoke all pesticide ''import'' tolerances for cadusafos, cyproconazole, diazinon, dithianon, diquat, dimethoate, fenamiphos, mevinphos, methomyl, naled, phorate, terbufos, and dichlorvos (DDVP) under section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The petition was filed on July 23, 2009, by the American Bird Conservancy (ABC).

DATES: This order is effective August 10, 2011. Objections and requests for hearings must be received on or before October 11, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0629. To access the electronic docket, go to *http://www.regulations.gov,* select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the *regulations.gov* Web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in *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: Richard Dumas, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8015; *e-mail address: dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

In this document EPA denies a petition by the American Bird Conservancy (ABC) to revoke pesticide tolerances. This action may also be of interest to agricultural producers, food

manufacturers, or pesticide manufacturers. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (North American Industrial Classification System (NAICS) code 111), *e.g.,* agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), *e.g.,* cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), *e.g.,* agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), *e.g.,* agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.
- Farm Product Warehousing and Storage (NAICS code 493130), *e.g.,* grain elevators, private and public food warehousing and storage.

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 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 access electronic copies of this document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov,* you may access this **Federal Register** document electronically through the EPA Internet under the **''Federal Register''** listings at *http://www.epa.gov/fedrgstr.* You may access a frequently updated electronic version of 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. Can I file an objection or hearing request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this order and may also request a hearing on those objections. You must file your objection or request a hearing on this order in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0692 in the subject line on the first page of your submission. All requests must be in writing, and must be received by the Hearing Clerk as required by 40 CFR part 178 on or before October 11, 2011.

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 that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0692, 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'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. Introduction

A. What action is the Agency taking?

On July 23, 2009, the American Bird Conservancy (ABC) filed a petition with EPA which requested that EPA revoke the ''import'' tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the following pesticides: cadusafos (banana); cyproconazole (green coffee beans); diazinon (kiwi fruit); dichlorvos (tomato); dithianon (fruit, pome, group 11; hop, dried cones); diquat (banana; green coffee beans); dimethoate (blueberry); fenamiphos (banana; fruit, citrus; garlic; grape; pineapple); mevinphos (broccoli; cabbage; cauliflower; celery; cucumber; grape; lettuce; melon; pea; pepper; spinach; squash, summer; strawberry; tomato; watermelon); methomyl (hop, dried cone); naled (cucumber; lettuce; tomato; pumpkin; squash, winter; turnip, tops); phorate (green coffee beans); and terbufos (green coffee beans). (Ref. 1). These tolerances are described as ''import'' tolerances because the pesticide uses associated with the tolerances are not registered for use in the United States under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.,* and thus, in practical effect, their only purpose is to govern the amount of pesticide residues in imported food.

ABC argues that the challenged tolerances allow use of pesticides hazardous to birds in Central and South American countries and thus EPA is obliged to revoke the challenged tolerances under Executive Order 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds,'' Executive Order 13186, 66 FR. 3853 (Jan. 17, 2001), and the Endangered Species Act (ESA), 16 U.S.C. 1531 et seq. For the reasons stated below, EPA is denying the petition to revoke tolerances.

B. What is the Agency's authority for taking this action?

Under section 408(d)(4) of the FFDCA, EPA is authorized to respond to a section 408(d) petition to revoke tolerances either by issuing a final rule revoking the tolerances, issuing a proposed rule, or issuing an order denying the petition. 21 U.S.C. 346a(d)(4).

III. Statutory and Regulatory Background

A. Statutory Background

1. *In general.* EPA establishes maximum residue limits, or ''tolerances,'' for pesticide residues in food under section 408 of the FFDCA. 21 U.S.C. 346a. Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is ''adulterated'' under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration and the U.S. Department of Agriculture. Section 408 was substantially rewritten by the Food Quality Protection Act of 1996 (FQPA), which added provisions establishing a detailed safety standard for pesticides for protecting humans from pesticide residues in foods, including additional protections for infants and children.

EPA also regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* While the FFDCA authorizes the establishment of legal limits for pesticide residues in food, FIFRA requires the approval of pesticides prior to their sale and distribution in the

United States, 7 U.S.C. 136a(a), and establishes a registration regime for regulating the use of pesticides. FIFRA regulates pesticide use in conjunction with its registration scheme by requiring EPA review and approval of pesticide labels and specifying that use of a pesticide in a manner inconsistent with its label is a violation of Federal law. 7 U.S.C. 136j(a)(2)(G). As discussed below, the scope of FIFRA extends beyond the human safety concerns of FFDCA section 408 to encompass environmental factors as well.

2. *Safety standard for pesticide tolerances.* A tolerance permitting pesticide residues in food may only be promulgated by EPA if the tolerance is ''safe.'' 21 U.S.C. 346a(b)(2)(A)(i). Correspondingly, a tolerance must be revoked if it no longer meets this safety standard. (*Id.*). ''Safe'' is defined by the statute 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.'' 21 U.S.C. 346a(b)(2)(A)(ii). Thus, safety determinations under FFDCA section 408 turn on the safety to the ''consumer'' of the pesticide residue in food. 21 U.S.C. 346a(b)(2)(D)(vi). Although residues in food are to be aggregated with other pesticide exposures, the aggregation requirement is bounded by the limitation that these other exposures of the consumer to the pesticide residue be ''non-occupational'' in nature. *Id.* Additionally, FFDCA section 408 specifically requires that these aggregate safety standard determinations expressly focus on protection of ''infants and children.'' 21 U.S.C. 346a(b)(2)(C). In contrast, the focus of FIFRA is much broader. Among other things, a pesticide may not be registered under FIFRA if it poses ''any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide * * *.'' 7 U.S.C. 136(bb).

3. *Procedures for establishing, amending, or revoking tolerances.* Tolerances are established, amended, or revoked by rulemaking under the unique procedural framework set forth in the FFDCA. Generally, the rulemaking is initiated by the party seeking to establish, amend, or revoke a tolerance by means of filing a petition with EPA. See 21 U.S.C. 346a(d)(1). EPA publishes in the **Federal Register** a notice of the petition filing and requests public comment. 21 U.S.C. 346a(d)(3). After reviewing the petition, and any comments received on it, EPA may issue a final rule establishing, amending, or revoking the tolerance, issue a proposed rule to do the same, or deny the petition. 21 U.S.C. 346a(d)(4). Once EPA takes final action on the petition by either establishing, amending, or revoking the tolerance or denying the petition, any affected party has 60 days to file objections with EPA and seek an evidentiary hearing on those objections. 21 U.S.C. 346a(g)(2). EPA's final order on the objections is subject to judicial review. 21 U.S.C. 346a(h)(1).

4. *Tolerance reassessment and FIFRA reregistration.* The FQPA requires, among other things, that EPA reassess the safety of all pesticide tolerances existing at the time of its enactment. 21 U.S.C. 346a(q). In this reassessment, EPA is required to review existing pesticide tolerances under the new ''reasonable certainty that no harm will result'' standard set forth in FFDCA section 408(b)(2)(A)(i). 21 U.S.C. 346a(b)(2)(A)(i). This reassessment was substantially completed by the August 3, 2006 deadline. Tolerance reassessment is generally handled in conjunction with a similar program involving reregistration of pesticides under FIFRA. 7 U.S.C. 136a–1. Reassessment and reregistration decisions are generally combined in a document labeled a Reregistration Eligibility Decision (''RED'').

IV. The Petition to Revoke Tolerances

The ABC Petition seeks the revocation of ''import'' tolerances for 13 pesticides. According to ABC, ''[t]hese pesticides are highly toxic to birds, and are used in crops that many species of U.S. migratory birds use as habitat during the winter months when they migrate to Latin America.'' ABC contends that maintenance of the specified import tolerances ''is tantamount to giving U.S. approval to foreign countries for the use of the pesticides.'' ABC objects to such ''approval'' claiming that, on the crops covered by the tolerances, EPA ''has already determined [that these pesticides pose] unacceptable risks for protected U.S. migratory birds.'' In support of these claims, ABC cites to various statements in REDs, for information on some of the pesticides' toxicity, and to information on use by migratory birds of agricultural lands as habitat.

Based on these allegations, ABC argues that EPA should revoke the tolerances under Executive Order 13186, addressing federal agency responsibilities for protecting migratory birds, or the Endangered Species Act (ESA). According to ABC, Executive Order 13186 obligates EPA ''to avoid or rescind regulatory actions that adversely affect migratory birds.'' The ESA, ABC argues, requires EPA to identify pesticide uses that may cause adverse impacts on endangered or threatened species and to implement mitigation measures to address those impacts, and to consult with the Fish and Wildlife Service before allowing the identified import tolerances to continue. Because EPA cannot implement mitigation measures in foreign countries, ABC contends that EPA must revoke the tolerances to meet its obligations under the ESA. Alternatively, ABC argues that if EPA determines the tolerances are ''necessary,'' EPA must consult with the Fish and Wildlife Service before allowing the tolerances to continue.

V. Public Comment

EPA published notice of the petition for comment on September 1, 2009. 74 FR 45200, September 1, 2009. EPA received 25 comments: 18 from individuals or wildlife protection organizations expressing general support for the petition; detailed comments in support of the petition from the Student Animal Legal Defense Fund (SALDF) at Lewis and Clark Law School; detailed comments in opposition to the petition from two organizations representing pesticide manufacturers and others and from 4 pesticide manufacturers; and supplemental information on the petition from ABC. (All comments are included in the docket for this action, EPA–HQ–OPP–2009–0629.)

The SALDF premises its arguments in support of the petition on its assertion that EPA, based on the assessments of risk from these pesticides to birds by EPA's Office of Pesticide Programs, ''has cancelled the use of the pesticides at issue in the United States.'' Given these cancellations, SALDF claims that EPA is not complying with its duty to promote conservation of endangered species under ESA section 7(a)(1) or its duty under ESA section 7(a)(2) to ensure that no action authorized by EPA is deleterious to the conservation of endangered species; with its obligations under Executive Order 13186 regarding the conservation of migratory birds; and with the bar in the Migratory Bird Treaty Act (MBTA) on the taking of migratory birds.

Crop Life America, an association of pesticide manufacturers, makes a series of arguments in opposition to the petition: Executive Order 13186 does not provide a private right of action and cannot be enforced against EPA; Executive Order 13186, the ESA, and the MBTA do not provide a basis for revoking pesticide tolerances because ecological issues cannot be considered

under FFDCA section 408; and the Petition fails to establish a nexus between the pesticide tolerances at issue and the claimed effects of the pesticides when used in other countries.

The Pesticide Policy Coalition, an organization representing a wide array of food- and pesticide-related industries, claims that the ABC petition has not met the regulatory requirements for a petition because ABC does not have a ''substantial interest'' in the tolerances challenged and because the petition is premised on a factor, ecological impacts, that is irrelevant to FFDCA section 408.

Syngenta Crop Protection, Inc., which is the manufacturer of cyproconazole and diquat, commented that both of these pesticides are registered in the United States and have been cleared by EPA after consideration of potential effects on birds. BASF Corporation, the manufacturer of dithianon, commented that, although dithianon is not registered in the United States, the lack of a FIFRA registration is not due to cancellation of such a registration by EPA but based on business decisions made by the company. BASF also noted that it was unaware of any EPA assessments that found dithianon to pose a hazard to birds. Bayer Crop Science provided comments regarding the pesticide fenamiphos. Bayer argued that ''[e]cological risk assessments have strong spatial and temporal components associated with them'' and that country-specific risk assessments would need to be conducted to determine the risks posed to birds. Bayer noted several of the risk mitigation requirements that appear on fenamiphos labels in Central and South American countries expressly for the purpose of reducing exposure to birds.

During the comment period, ABC filed additional information with EPA pertaining to use of agricultural fields in Latin America by migratory birds. According to ABC, these data showed 206 migratory bird species used agricultural fields as habitat and those 206 species included 12 ESA listed species and 54 bird species of conservation concern.

VI. ABC's Allegations Concerning the Harmful Nature of the Challenged Pesticides

As noted above, ABC contends that EPA has already determined in Reregistration Eligibility Documents that the pesticides challenged in this petition present ''unacceptable risks for protected U.S. migratory birds'' when used on the crops covered by the challenged import tolerances. This claim, however, is not supported by ABC's petition and records cited therein.

ABC admits that EPA has made no finding as to the risk to birds for four of the pesticides (cadusafos, cyproconazole, dithianon, and mevinphos). (Refs. 1, 2, and 3). As to another four of the pesticides (diquat, methomyl, naled, terbufos), ABC does not identify any EPA findings on the risks those pesticides pose to birds, and instead merely cites EPA's conclusions regarding human risk. (Refs. 1, 4, 5, 6, and 7). For the remaining five pesticides (diazinon, dichlorvos, dimethoate, fenamiphos, phorate), ABC cites to statements in the relevant REDs in which the pesticides are characterized as ''highly toxic'' to birds. (Ref. 1.) However, as to each of these pesticides, the RED concluded that the pesticide met the standard for reregistration for outdoor uses in the United States so long as various steps were taken to mitigate exposure to birds. (Refs. 8, 9, 10, 11, and 12). Moreover, in none of those REDs did EPA conclude that the pesticides posed unacceptable risks to birds with regard to the specific crops covered by the challenged import tolerances.

VII. Ruling on Petition

ABC's petition requests that EPA revoke ''import'' tolerances for 13 pesticides due to the risks these pesticides pose to birds in countries outside of the United States. In filing its request, ABC does not cite to anything in FFDCA section 408, the statutory provision authorizing EPA to establish such tolerances, which compels revocation of the challenged tolerances. Rather, ABC argues that EPA must revoke the challenged FFDCA tolerances due to provisions in EO 13186 and the Endangered Species Act. For the reasons explained below, EPA has concluded that these authorities do not support ABC's contentions.

A. Executive Order 13186

ABC's primary focus in its petition to revoke tolerances is EPA's obligations under Executive Order 13186. While ABC believes that EPA has an obligation under Executive Order 13186 ''to avoid or rescind regulatory actions that adversely affect migratory birds'', it provides no rationale for why it believes that the Executive Order compels that action. EPA concludes, however, that EO 13186 does not compel EPA to take action to revoke the challenged tolerances, and it does not even provide EPA authority to do so.

Executive Order 13186 was issued by President Clinton in 2001, pursuant to the authority provided in the Constitution and the laws of the United States, and in furtherance of the purposes of the MBTA, the Bald and Golden Eagle Protection Acts, the Fish and Wildlife Coordination Act, the Endangered Species Act, NEPA, and ''other pertinent statutes.'' Executive Order No. 13186, 66 FR. 3853 (Jan. 17, 2001). The purpose of the Executive Order is to ''direct executive departments and agencies to take actions to further implement the Migratory Bird Treaty Act.'' *Id.* at section 1. The Executive Order fulfills this purpose by directing each federal agency that is ''taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations * * * to develop and implement, within 2 years, a Memorandum of Understanding (MOU) with the Fish and Wildlife Service (Service) that shall promote the conservation of migratory bird populations.'' Id. at section 3(a). The Executive Order directs that certain procedural provisions be included in the MOU. *See* id. at section 3(c) and (d). The Executive Order also directs agencies to adopt certain substantive provisions in their MOUs, ''to the extent permitted by law and subject to the availability of appropriations and within Administration budgetary limits, and in harmony with agency missions.'' *Id.* at section 3(e). Thereafter, Executive Order 13186 and the MOU ''are intended to be implemented when new actions * * * are initiated * * *.'' *Id.* at section 3(c). Actions are defined as including rules, although the Executive Order allows each agency to further define what action means and what programs should be included in the MOU. *Id.* at section 2(h).

As an initial matter, ABC cannot compel the Agency to take any action under EO 13186 because there is no private right of action under this Executive Order. On its face, EO 13186 expressly precludes such a right. Section 5(b) of Executive Order 13186 states:

> This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

In fact, one court has confirmed explicitly this provision precludes any party from obtaining judicial review of any claim alleging violations of EO 13186. *See Defenders of Wildlife* v. *Jackson,* No. 09–1814 (D.D.C. June 14, 2011). For this reason alone, any claim that EPA must revoke pesticide

tolerance regulations because EPA is violating EO 13186 fails.

Nonetheless, even once an MOU is finalized, that MOU would not provide a basis for EPA to revoke the challenged tolerances. The MOU could not compel EPA to take action that it does not otherwise have the statutory authority to take. As discussed in Unit VII.B., EPA does not have discretion under the FFDCA in assessing the safety of a pesticide tolerance to consider whether tolerances would be ''likely to have a measurable negative effect'' on U.S. migratory birds that winter in foreign countries.

B. Endangered Species Act

ABC also argues that EPA has a statutory obligation under the Endangered Species Act, 16 U.S.C 1531 et seq., to ''identify all pesticides whose use may cause adverse impacts on endangered and threatened species and to implement mitigation measures to address the adverse impacts.'' Presumably, ABC is referring here to EPA's obligations under ESA section 7. According to ABC, because EPA cannot require ''pesticide use mitigation measures'' in foreign countries, EPA should fulfill its ESA obligations by revoking tolerances allowing commodities containing such pesticides to be distributed in the United States or, at a minimum consult with the FWS prior to allowing the tolerances to remain in effect. However, ABC's claim that the ESA provides authority for revoking FFDCA tolerances is incorrect.

ESA obligations only apply where EPA has ''existing discretionary authority;'' the ESA does not ''override express statutory mandates.'' *Home Builders' Ass'n* v. *EPA,* 551 U.S. 644, 487 (2007); 50 CFR 402.03. EPA establishes pesticide residue tolerances under section 408 of the FFDCA. Section 408 authorizes EPA to set ''safe'' exposure levels for pesticide residue levels in foods distributed in the United States. Thus, under FFDCA section 408, EPA does not regulate use of pesticides; rather, EPA regulates levels of pesticide residues in food distributed in interstate commerce. ABC's petition would override these statutory mandates in FFDCA section 408, and, in effect, rewrite section 408 as a provision addressing environmental effects of pesticide use in foreign countries.

As noted, the FFDCA scheme is explicitly directed at the pesticide residue in food when the food is in interstate commerce. FFDCA section 408 establishes that if a food contains a pesticide residue for which there is no tolerance, or a pesticide residue at a level exceeding the applicable tolerance, then the food is deemed ''unsafe'' as a matter of law. 21 U.S.C. 346a(a). Foods deemed ''unsafe'' on these grounds are considered ''adulterated.'' 21 U.S.C. 342(a)(2)(B). It is unlawful under the FFDCA to ''introduc[e] or deliver[] for introduction into interstate commerce any food * * * that is adulterated * * * .'' 21 U.S.C. 331(a). Additionally, adulterated food is subject to seizure ''when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce * * * .'' 21 U.S.C. 334(a)(1).

Consistent with this narrow focus on pesticide residues in food in interstate commerce, the standard for establishing and revoking tolerances is directed solely at the safety of the pesticide residues in food to the food consumer, taking into account other sources of pesticide exposure to the consumer as well. Specifically, the statute provides that ''[t]he Administrator may establish or leave in effect a tolerance for a pesticide chemical residue in or on a food only if the Administrator determines that the tolerance is safe.'' 21 U.S.C. 346a(b)(2)(A)(i). Invariably, FFDCA section 408 directs EPA to consider factors relevant to the safety of the pesticide residue in food (aggregated with other sources of exposure to the pesticide residue), placing particular emphasis on human dietary risk. See, *e.g.,* 21 U.S.C. 346a(b)(2)(B) (addressing an exception to the safety standard for pesticide residues as to which EPA ''is not able to identify a level of exposure to the residue at which the residue will not cause or contribute to a known or anticipated harm to human health''); 21 U.S.C. 346a(b)(2)(C) (requiring special safety findings as to ''infants and children'' regarding their ''disproportionately high consumption of foods'' and their ''special susceptibility * * * to pesticide chemical residues''); 21 U.S.C. 346a(b)(2)(D)(iii) (requiring consideration of the relationship between toxic effects found in pesticide studies and human risk); 21 U.S.C. 346a(b)(2)(D)(iv), (vi), and (vii) (requiring consideration of available information on ''dietary consumption patterns of consumers,'' ''aggregate exposure levels of consumers,'' and the ''variability of the sensitivities of major identifiable subgroups of consumers''); 21 U.S.C. 346a(b)(2)(D)(vi) (requiring consideration of ''non-occupational'' sources of exposure); 21 U.S.C. 346a(b)(2)(D)(viii) (requiring consideration of information bearing on whether a pesticide ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects''); 21 U.S.C. 346a(l)(2) and (3) (requiring revocation or suspension of tolerances where associated FIFRA registration is canceled or suspended ''due in whole or in part to dietary risks to humans posed by residues of that pesticide chemical on that food''). In no place, does section 408 explicitly or implicitly authorize EPA to consider environmental factors in addition to factors bearing on the safety of pesticide residues in food in interstate commerce. Thus, under section 408, EPA has no authority to revoke a pesticide residue food tolerance found to contain safe levels of pesticide residues in food based upon a conclusion that the use of the pesticide has negative impacts on endangered or threatened species of birds. Because EPA has no discretion to insert environmental considerations into decisions on FFDCA section 408 tolerances, the ESA, under the Supreme Court's holding in *Homebuilders* and the applicable regulations, is inapplicable to decisions made under FFDCA section 408.

Even if the ESA did apply to FFDCA section 408 decisions, ABC's petition fails because ABC has not offered evidence on an element critical to demonstrating that the existence of the tolerances in question have either a direct or indirect effect on endangered species of birds within the jurisdiction of the ESA. See 50 CFR 402.02. Clearly, pesticide tolerances in food do not have a direct impact on wildlife. Tolerances establish the legality of pesticide residues in food moved through interstate commerce in the United States and have no applicability to wildlife. ABC has not claimed otherwise.

Nor has ABC shown that the challenged tolerances have an indirect effect on endangered birds. Applicable regulations define an ''indirect effect'' as those that are caused by the action and that are later in time, but still are ''reasonably certain to occur.'' 50 CFR 402.02 (defining ''Effects of the action''). ABC argues that the challenged tolerances are reasonably certain to cause an effect on migratory birds, some of which are endangered, because ''[m]aintaining a U.S. import tolerance allows Central and South American countries to continue using these pesticides on crops for which the U.S. has already determined there are unacceptable risks for protected U.S. migratory birds.'' To support this argument, ABC has proffered evidence that the pesticides can be toxic to birds and that birds may use agricultural lands in these foreign countries. However, even assuming this evidence

is unassailable, ABC still has failed to support a critical aspect of its claim because it offered no evidence to show the pesticides are used in these countries on crops intended for export to the United States, the conditions under which the pesticides are used (*e.g.,* application methods, application rates, environmental conditions), and why those conditions of use are a threat to endangered birds. In the absence of such evidence, there is no basis to conclude that the tolerances are ''reasonably certain to cause'' an effect on endangered birds. Essentially, ABC's petition asks EPA to assume that the tolerances *cause* the pesticide to be used on crops for export to the United States, and, more importantly, *cause* the pesticide to be used in a manner that is reasonably certain to affect endangered bird species. On the latter point, ABC's argument fails to take into consideration the fact that use of challenged pesticides in the foreign country would be governed by that country. As a policy matter, EPA would not presume that the mere existence of a U.S. tolerance carries such overriding weight that it is reasonably certain to cause independent sovereign governments to abandon regulatory oversight of the pesticide and uncritically permit its use under conditions that are reasonably certain to have an effect on endangered migratory birds. Yet, this is the very premise of ABC's petition. Finally, ABC's claim that these pesticides will have an impact on endangered birds in Central and South America is not rescued by its assertion that these pesticides have been found by EPA to pose unacceptable risks to birds on the crops covered by the tolerances. As noted above in Unit VI., this is a significant overstatement.

VIII. Response to Comments

SALDF makes many of the same arguments made by ABC in its petition, and EPA disagrees with these claims for the reasons provided in Unit VII. Also like ABC, SALDF premises its comments on the incorrect assertion that the challenged pesticides are ''banned in the U.S.'' due to the risk they pose to birds. Apparently going beyond ABC's petition, SALDF alleges that EPA has an obligation to comply with provisions of EO 13186, which relate to international activities. EPA disagrees with this allegation because, as discussed in Unit VII.A., the Executive Order does not provide a basis for revoking the challenged tolerances under the FFDCA. Finally, SALDF argues that the MBTA compels EPA to revoke the tolerances. This argument, however, is without legal basis. There is no violation of the MBTA when the Federal government action is not directly causing or will not directly cause the take of any migratory birds. Courts have found that Federal government actions that only impact migratory bird habitat without directly taking migratory birds (*e.g.,* timber sales occurring in the United States approved by the U.S. government) do not violate the MBTA. *See Newton County Wildlife Ass'n* v. *U.S. Forest Serv.,* 113 F.3d 110 (8th Cir. 1997) (finding that government approval of timber sales only ''indirectly results in the death of migratory birds''; MBTA is concerned more with ''physical conduct of the sort engaged in by hunters and poachers''); *Seattle Audubon Soc'y* v. *Evans,* 781 F. Supp. 1502 (9th Cir. 1991) (finding no government liability in approving timber sales that affected migratory bird habitat). EPA's retention of the challenged tolerances does not involve any physical conduct directed at killing migratory birds nor does it directly result in the take or killing of any migratory birds. EPA's action is even further removed from any possible bird deaths than the timber sales directly resulting in destruction of migratory bird habitat that were found not to be covered by the MBTA in *Newtown County Wildlife* and *Seattle Audubon Society.* In fact, SALDF, by admitting that EPA ''is unable to directly regulate pesticide use in sovereign nations,'' has essentially conceded that there is no direct action by EPA that causes the take of migratory birds in Central and South American countries. After all, it is regulatory action by EPA (*i.e.,* retention of tolerances) that SALDF cites as the basis for its MBTA argument. Rather than allege direct action by EPA against migratory birds, SALDF states only that revoking the tolerances would ''contribute to the protection of migratory birds.'' The possibility that removing a tolerance might contribute to the protection of migratory birds falls far short of demonstrating that the continuance of a tolerance is a ''take'' under the MBTA and, as discussed in Unit VII.B., is not a basis for revoking tolerances under the FFDCA.

EPA generally agrees with the comments from CropLife America, the Pesticide Policy Council, and the various pesticide manufacturers. That agreement is reflected in Units VI., VII., and VIII. EPA would note, however, that the Pesticide Policy Council is mistaken in its claim that only pesticide registrants may petition to revoke tolerances under EPA regulations. According to the Pesticide Policy Council, EPA regulations specify that a petitioner must show a ''substantial interest'' in the challenged tolerance and the regulations also define FIFRA registrants or applicants for registration of a pesticide as the only party with a substantial interest in a tolerance for that pesticide. The Council errs by concluding that the regulation's provision that evidence of registration or application for registration ''will be regarded as evidence that a person has a substantial interest'' defines the universe of persons with a substantial interest. 40 CFR 180.32(b). In fact, the regulation merely defines one person who does have a substantial interest in a tolerance without in any way limiting persons with a substantial interest only to registrants or applicants.

IX. Regulatory Assessment Requirements

As indicated previously, this action announces the Agency's order denying a petition filed under section 408(d) of FFDCA. As such, this action is an adjudication and not a rule. The regulatory assessment requirements imposed on rulemaking do not, therefore, apply to this action.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

XI. References

1. American Bird Conservancy, Petition to Revoke Import Tolerances of 13 Pesticides (July 23, 2009).
2. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision: Cadusafos (June 2000).
3. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision: Mevinphos (September 2000).
4. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED): Diquat Dibromide (April 25, 2002).
5. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Reregistration Eligibility Decision (RED): Methomyl (December 1998).
6. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Interim Reregistration Eligibility Decision for Naled (January 2002).
7. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Interim Reregistration Eligibility Decision for Terbufos (September 2001).

8. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Interim Reregistration Eligibility Decision: Diazinon (May 2004).
9. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Interim Reregistration Eligibility Decision for Dichlorvos (DDVP) (June 2006).
10. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Interim Reregistration Eligibility Decision for Dimethoate (June 12, 2006).
11. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Interim Reregistration Eligibility Decision: Fenamiphos (May 2002).
12. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Interim Reregistration Eligibility Decision for Phorate (March 2001).

List of Subjects in 40 CFR Part 180

Environmental protection, Endangered species, Pesticides and pest.

Dated: July 29, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2011–20200 Filed 8–9–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2000–0003; FRL–9450–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of International Smelting and Refining Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a direct final Notice of Deletion of the International Smelting and Refining Superfund Site (Site), located in Tooele, Utah, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the state of Utah, through the Utah Department of Environmental Quality (UDEQ) because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective October 11, 2011 unless EPA receives adverse comments by September 9, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2000–0003, by one of the following methods:

- *http://www.regulations.gov*. Follow online instructions for submitting comments.
- *E-mail:* Erna Waterman, Remedial Project Manager, *waterman.erna@epa.gov*.
- *Fax:* 303–312–7151.
- *Mail:* Erna Waterman, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, EPR–SR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 8, EPR–SR, 1595 Wynkoop Street, Denver, Colorado. 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–SFUND–2000–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA, Region 8, Records Center, 1595 Wynkoop Street, Denver, Colorado 80202–1129 (303) 312–6473, Hours: M–F 8 a.m. to 4 p.m.

Tooele City Library, 128 West Vine Street, Tooele, Utah 84074, (435) 882–2182, Hours: T–F 10 a.m. to 8 p.m. and Saturdays 10:30 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: Erna Waterman, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, EPR–SR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6762, *e-mail: waterman.erna@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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III. Deletion Procedures
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I. Introduction

EPA Region 8 is publishing this direct final Notice of Deletion of the International Smelting and Refining Superfund Site, (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e) (3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed

remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective October 11, 2011 unless EPA receives adverse comments by September 9, 2011. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the International Smelting and Refining (IS&R) Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the state of Utah prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register.**

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the Utah Department of Environmental Quality, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, Tooele Transcript Bulletin. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the IS&R Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The International Smelting & Refining (IS&R) Superfund Site (Site ID UTD093120921) is located approximately two miles northeast of Tooele, in Tooele County, Utah. The Site occupies the lower portion of Pine Canyon on the west flank of the Oquirrh Mountains. The IS&R Site is comprised of three areas:

1. The former smelter property and surrounding land known as the Pine Canyon Conservation Area, which is owned by Atlantic Richfield Company, Inc. (ARCO), and comprises the majority of the Site;

2. Portions of the former Tooele Valley Railroad (TVRR) grade that extend from the Conservation Area to the city of Tooele, Utah; and

3. Pine Canyon, a residential area adjacent to the Conservation Area which is locally referred to as Lincoln Township.

The 3,000 acre Conservation Area includes the 1,200 acre area once occupied by the smelter and tailing impoundments and all the adjacent property owned by ARCO. ARCO, in conjunction with the Utah Division of Wildlife Resources (UDWR), created a conservation easement in 1994 to protect the reclaimed features. The Conservation Area and the area included within the conservation easement are one and the same. The current boundary for this Conservation Area coincides with the ARCO property boundary.

The TVRR grade portion of the Site is the former railroad right-of-way running from Vine Street in the City of Tooele east to where the right-of-way intersects the Conservation Area boundary. The length of the former rail line is approximately 10,000 feet, and because the land use changes along the former rail line from Tooele to the Conservation Area, the TVRR grade was sectioned into three study areas termed the ''town,'' ''school''' and ''extension'' sections to reflect different land uses.

Pine Canyon occupies two square miles and is located on the western edge of the former IS&R smelter property. There are approximately 135 properties within the township with a population of about 470 people. The Pine Canyon community includes the properties that were impacted by smelter operations.

The IS&R Site was proposed for addition to the NPL in the **Federal Register** dated April 23, 1999 (FR Volume 64, No. 78, pages 19968–19974). The Site was made final on the NPL in the **Federal Register** dated July 27, 2000 (FR Volume 65, No. 145, pages 46096–46104). The existence of tailing impoundments, smelter wastes and contaminated surface soils and groundwater were the principal reasons for listing the IS&R Site. The contaminants of concern are lead and arsenic.

Conservation Area

IS&R began operations in Tooele in 1910 on approximately 1,200 acres. At various times, from 1910 through 1972, IS&R operated copper and lead smelters and a lead-zinc flotation mill. In the early years of IS&R operation, tailings and slag were produced at an estimated annual rate of 650,000 tons per year with declining output in later years. Approximately 326 acres of tailing of an unknown volume are located within the tailing impoundment. The copper smelter was closed in 1946, followed by the closure of the lead-zinc flotation mill in 1968 and the lead smelter in 1972. With the exception of a few incidental buildings, the smelter facility was demolished or scrapped in the mid-1970s.

From 1974 through 1981, the Anaconda Company constructed and operated a mine and mill known as the Carr Fork Operation. The main mill of the operation was one mile east of the IS&R smelter property in Pine Canyon on approximately 12.5 acres. The operation began processing ore in 1979 and ran for less than two years. Tailings from the operation were transported down Pine Canyon to the original IS&R tailing impoundment where a new 100-foot high tailing dam was constructed. Because of the short duration of operations of the Carr Fork Mill, the tailings encompass only about 64 acres behind the constructed dam.

Pine Canyon/Lincoln Township

Lincoln was settled in the late 1800s as a farming and ranching area. When the smelter was constructed in 1908, much of the original farm land was purchased by the International Smelting and Refining Company for operation of the smelter. During the operational period of the smelter, Lincoln continued to be used for farming and also became the residence for some smelter employees. Since the smelter discontinued operations in 1972, the area has experienced a slow, steady growth to its current population of about 470 people.

Lincoln Township was established in 1996 and operates as a separate planning district within Tooele County. Current land uses include residential, recreational visitor and open agricultural.

Tooele Valley Railroad (TVRR) Grade

The TVRR was constructed in 1909 to connect the Union Pacific and Western Pacific lines at Warner, Utah, (west of Tooele) to the IS&R smelter—a distance of approximately seven miles. The primary reason for TVRR's existence was for the support of the IS&R smelter. The railroad was used for transporting smelter ores, concentrates, equipment, and personnel to and from the Site.

Removal Actions

In 2003, maintenance activities were performed by ARCO at the Carr Fork Landfill Area which is near the east side of the Site and is approximately six acres in size. The landfill contains mostly debris from the demolition phase of the reclamation project which occurred in 1986. Also, the Site Entrance Stained Soils Area is near the west side of the Site, near the point of entry for Site visitors. The soils were of a dark brownish tint, and the area was approximately four acres in size.

Diversion berms were installed to divert water flow away from the landfill and steep canyon slopes. The landfill area was grubbed and scarified in the area where the diversion berms were to be placed. Riprap was installed in areas of high erosion potential. The Site Entrance Area was grubbed and scarified. The area was then covered with 12 to 15 inches of compacted fill material and revegetated. The project was completed on June 20, 2003. Additional detail can be found in the Initial and Final Pollution Report dated September 10, 2003.

In 2004 & 2005 a residential soil Removal Action was conducted in Lincoln Township/Pine Canyon. Studies conducted as part of the Remedial Investigation found that some of the properties located in the Pine Canyon community, west of the Conservation Area, had been impacted by smelter-related contaminants. Due to high lead levels in a blood test taken by the Tooele County Health Department (TCHD) on a child in Pine Canyon and the risks identified by the Baseline Human Health Risk Assessment, EPA and the UDEQ determined that immediate implementation of a removal action was necessary to reduce local residents' exposure to lead and arsenic in the environment. In July 2004, EPA issued a Unilateral Administrative Order for a Time-Critical Removal Action, to address all remaining potential risks in the residential area. The cleanup levels used were 580 mg/kg lead and 100 mg/kg arsenic.

Excavation was completed on 19 residential properties and included 9,100 cubic yards of material removed and transported to the tailing repository on the smelter property. After excavation, each property was backfilled and landscaped or restored similar to the pre-construction condition. A Removal Action at the railroad grade of the TVRR was completed in the summer of 2005. The railroad grade extends from Vine Street in Tooele, east to where it divides into two tracks and then intersects the Conservation Area. For Removal Action planning and remedial action, the former grade was divided into three corresponding sections that include the town, school and extension sections.

A Unilateral Administrative Order was issued by EPA to Atlantic Richfield Company, Inc. (ARCO) on November 21, 2003. Under this order, ARCO conducted field sampling to investigate the degree and extent of the metals impact on the grade. The sampling results of relevant zones and areas that exceeded cleanup levels were included in the TVRR grade Removal Action. The administrative order required removal of up to 18 inches of soil in the town and school sections where lead and arsenic concentrations exceeded the cleanup levels and removal or capping of up to 18 inches of soil in the extension sections. The human health cleanup levels for these areas are 580 mg/kg lead and 100 mg/kg arsenic for the town and school section soils and 2,231 mg/kg lead and 900 mg/kg arsenic for the extension section soils.

In 2006, a Removal Action was performed in the Conservation Area. During the Remedial Investigation (RI) for the Site, 18 locations of varying sizes were identified in the Conservation Area that exceeded the cleanup levels of 8,000 mg/kg lead and 900 mg/kg arsenic.

The Conservation Area Removal Action began in the fall of 2006 and was completed during the spring of 2007. Locations that exceeded cleanup levels were addressed by placing a 12-inch thick cap of clean soil over the contaminated area and then reseeding the surface. Two of the 18 locations identified during the Remedial Investigation were within the tailings pile and could not be safely addressed as a result of physical hazards. Therefore, fencing and other physical barriers were constructed to limit access to these two locations. The Removal Action also addressed areas where

vegetation was limited or absent and contaminant concentrations were below cleanup levels. These areas were addressed by removing 24 inches of soil, back-filling the excavation with clean soil and reseeding. A thorough discussion of the 2006 Conservation Area Removal Action is included in the 2006 Conservation Area Removal Action Final Construction Report dated June 1, 2007. Figure 2–4 of that report shows the areas addressed by the 2006 Removal Actions.

Ongoing or Potential Development

The Conservation Area (ARCO property) is designated as a wildlife conservation area in accordance with an easement agreement between ARCO and the Utah Division of Wildlife Resources (UDWR). The agreement precludes the property from being used for purposes other than the maintenance and enhancement of wildlife indigenous to the Oquirrh Range foothills. Activities that would impact remedial features are prohibited, such as drilling and exploration, filling, excavating, mining, dredging, and removal of top soil and other materials, and commercial, industrial, and agricultural use as set forth in the conservation easement. Before and since the easement was originally issued in 1994, efforts have been made to develop and protect this area for wildlife purposes. The management plan prepared by UDWR and endorsed by ARCO defines uses and periods of use allowable on the property. In general, current use of the area includes light recreational uses such as walking, wildlife observation and hunting. Motorized vehicles are not permitted on Site except for maintenance purposes, which is enforced by the UDWR. The property is fenced to prevent unauthorized use of the area. Use of the area is not expected to change in the future.

Current land uses within Pine Canyon include residential, agricultural and recreational designations. Though the actual township boundaries are large in area, the bulk of the population is located along Ericson Road and near the intersection of Blue Peak Drive and Pine Canyon Road. Behind the houses are large open fields used for farming and pasture. The Boys Ranch parcel, a large tract of open land to the northwest of the Pine Canyon/Blue Peak Road intersection, is planned for development. Institutional controls have been established to ensure that the completed remedy and future development of open land remains protected.

Remedial Investigation (RI)

ARCO conducted the Remedial Investigation (RI) between 2001 and 2006 with EPA oversight. The chief objective of the RI was to determine the potential risk to human health and the environment of the IS&R Site and adjacent land by evaluating the Site in its current condition, taking into account reclamation actions completed in 1986, verifying previous investigation sample results of the Site prior to reclamation, and assessing conditions in areas not previously addressed by reclamation efforts including near-by residential areas.

The Conservation Area was divided into work areas during the RI to facilitate the inspection. During the RI, soils, slag, sediment, surface water and groundwater were sampled, and Site inspections were conducted to identify areas where future remedial action may be required. In addition to samples collected on the former smelter site and surrounding fields, residential yard samples and household dust samples were collected from selected residential dwellings in the community of Pine Canyon, located west of the smelter site. The investigation monitored groundwater wells in the area of the smelter, Pine Canyon and nearby areas.

Soil and sediment samples were analyzed for 23 metals and pH. The metals included aluminum, antimony, arsenic, barium, beryllium, cadmium, calcium, chromium, cobalt, copper, iron, lead, magnesium, manganese, mercury, nickel, potassium, selenium, silver, sodium, thallium, vanadium and zinc. Water samples were analyzed for the same 23 metals, 4 anions and 4 physical properties, including all drinking water standards. Analytical results of the samples collected show that when lead and arsenic are high, other metals may then be present in concentrations high enough to pose a concern. Therefore, throughout the investigation, lead and arsenic were used as indicator metals to gauge the impact on areas from smelter operations.

Groundwater samples were collected on and near the Site from 2001 through February 2006 to determine what impact, if any, to area aquifers are a result of past operations at the IS&R Site, and in an attempt to locate a source of elevated arsenic in the groundwater.

Findings of the Feasibility Study (FS)

The Feasibility Study concluded that past Removal Actions had addressed areas with soil containing concentrations of contaminants of concern above cleanup levels. Institutional controls will be required to ensure that the protectiveness of the remedy is maintained. Monitoring of groundwater will be required to determine if arsenic concentrations change, over time, relative to baseline concentrations.

Selected Remedy

A Record of Decision (ROD) for the Site was issued by EPA on September 27, 2007. The remedy established in the ROD takes into account all removal work and capped areas in the Carr Fork Landfill Area, TVRR, and the Conservation Area; selects the implementation of institutional controls and monitoring as needed to protect the integrity of the previously completed removal and reclamation actions; and concludes that no further remedial construction is necessary.

Remedial Action Objectives

Remedial Action Objectives (RAO) for the Conservation Area, the TVRR grade area, and Pine Canyon were achieved as a result of the 2006 Conservation Area Removal Action, the 2004 and 2005 Pine Canyon/Lincoln residential Removal Action and the TVRR Removal Action completed in the summer of 2005.

The RAOs identified for the Site consisted of the following:

1. For human and ecological receptors, prevent direct contact/ingestion with soil having lead and/or arsenic concentrations in excess of cleanup levels identified for the Site, and

2. For human and ecological receptors, protect water quality in stream by minimizing migration of soil with lead and/or arsenic concentrations above cleanup levels into streams.

RAOs were not necessary for surface and ground water and sediments since these media did not pose a risk to human health and the environment. RAOs for groundwater were not necessary.

Response Actions

The findings of the Record of Decision indicate that the Removal Actions performed at the Site have addressed all contamination that exceeds clean up goals set for the Site.

Cleanup Goals

- Residential area soils do not exceed 580 mg/kg lead and 100 mg/kg arsenic
- Conservation area soils do not exceed 8,000 mg/kg lead and 900 mg/kg arsenic.
- TVRR Town and School Section soils do not exceed 580 mg/kg lead and 100 mg/kg arsenic.

- TVRR Extension Section soils do not exceed 2,300 mg/kg lead and 900 mg/kg arsenic.

Operation and Maintenance

Operation and maintenance of the Site is conducted by UDWR and ARCO in accordance with the Long Term Operation and Maintenance Plan (O&M Plan 2010). ARCO is responsible for O&M at the Site. Fence posts and wire will be repaired and replaced as necessary to maintain security of the Site. This is especially important to prevent motorized vehicles from accessing the Site and damaging the cover.

- Adequate signage has been placed (and will be replaced as necessary) around the perimeter Site fence to instruct the public regarding prohibited Site activities.
- An annual inspection is conducted at the Site in May of each year (after spring runoff season). The inspection includes a photographic record and looks at:
  - Vegetation loss or obvious stressed areas (seed and fertilizer is placed as necessary)
  - Vandalism of fences or signs, or other evidence of unauthorized trespassing
  - Condition of culverts
  - Erosion or other damage to the protective soil cover
  - Erosion of channels or other storm water drainage control structure
- Items found deficient during the inspections will be corrected to protect the remedy at the Site as outlined in the O&M Plan

Monitoring will be required for all three areas of the Site. Monitoring by ARCO will consist of inspecting the integrity of the caps, covers and storm water controls on an annual basis. The UDWR will conduct day to day surveillance as dictated in the Long Term Operations and Maintenance Plan and Conservation Easement. Groundwater monitoring will be conducted at the Conservation Area to ensure that the former smelter area does not become a source of groundwater contamination in the future.

Institutional Controls

ARCO will assist the TCHD in administering the institutional controls, which regulate the development of land within an overlay zone in Pine Canyon where soils could potentially have elevated concentrations of lead and/or arsenic. This includes providing information and review if necessary, of sampling and analysis plans prepared by land developers. Institutional controls will be monitored to ensure that they remain in place and serve their intended purposes.

Five-Year Review

In accordance with CERCLA § 121 (c), the Site is subject to statutory five-year reviews since hazardous substances, pollutants, or contaminants remain on Site above levels that allow for unlimited use and unrestricted exposure. The first statutory five-year review will be conducted in September 2012.

Community Involvement

Shortly after the Site was listed on the NPL, an information repository containing the Administrative Record and other information about the Site was established in 2000 at the Tooele Public Library, 128 West Vine Street, Tooele, Utah, and at the Superfund Records Center at EPA Region 8 in Denver. The UDEQ has numerous files and information related to this Site, which are available to the public upon request; however, the UDEQ is not considered an information repository for the Site.

EPA and UDEQ completed a community involvement plan for the Site in November 2001. This plan outlined methods to enhance understanding and communication so that those impacted can become more informed about the Site activities and be part of the decision making process. The plan was based primarily on discussions with residents, local officials and business leaders, and it enlisted the support of local groups, individuals and elected officials to collect and distribute information.

An informal community advisory group was formed shortly after the Site was placed on the NPL. Meetings have been a joint effort between the EPA, UDEQ, TCHD and citizens, and include a citizen co-chair. Notices about the meetings and the proposed agenda are mailed and e-mailed to citizens in advance of all meetings. Information is also placed in the Tooele Transcript's event section known as the Bulletin Board.

EPA and UDEQ have maintained regular contact with members of the community and implemented a variety of community relations activities as new information about the Site has become available. This has included holding public meetings; distributing fact sheets, brochures and flyers; meeting with community members and local officials; developing and maintaining an EPA Web fact sheet; and sharing information with the local media. The EPA and UDEQ supported the TCHD in conducting a survey with residents about the Site in 2001. EPA also worked with the County to develop a brochure that was distributed to residents in 2002.

EPA developed and distributed a fact sheet in June 2004 to alert residents of soil sampling activities. The fact sheet included questions about health effects of lead and arsenic in soil and included tips to reduce exposure. It also informed the community of the County's services for free blood testing.

The remedial investigation, feasibility study reports and the proposed plan, were released to the public for comment on June 16, 2007. These documents were made available to the public in both the Administrative Record and the informational repository described above. In addition, approximately 100 copies of the proposed plan were mailed to citizens in the neighborhoods adjacent to the Site. The notice of availability for the proposed plan was published in the Tooele Transcript on June 14, 2007. A public comment period on the proposed plan was held from June 16, 2007 to July 16, 2007.

A public meeting was held on June 26, 2007, at the TCHD regarding the proposed plan for the Site. At this meeting, representatives from EPA and UDEQ answered questions about the current condition of the Site, the remedial alternatives under consideration and the preferred alternative. Several community members, including the co-chair of the community advisory group, expressed support for the preferred alternative and there were no objections to the preferred alternative. EPA did not receive any written comments during the comment period.

Determination That the Site Meets the Criteria for Deletion in the NCP

Four Removal Actions have been completed at the Site. The Record of Decision concluded that the removals satisfied all remedial requirements at the Site.

The Region has followed the procedures required by 40 CFR 300.425(e) as follows:

1. Responsible parties or other persons have implemented all appropriate response actions required.
2. The state of Utah, through the Utah Department of Environmental Quality has concurred in the deletion of the Site on August 25, 2010.
3. A Notice of Intent to Delete has been published in the local newspaper.
4. Information supporting the proposed deletion has been made available in the information repository for the Site.

V. Deletion Action

The EPA, with concurrence of the state of Utah through the Utah Department of Environmental Quality (UDEQ), has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective 45 days from the date of this publication in the **Federal Register** unless EPA receives adverse comments within 30 days from this publication in the **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 3, 2011.

James B. Martin,

Regional Administrator, Region 8.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for ''International Smelting and Refining'', ''Tooele'', ''UT''.

[FR Doc. 2011–20291 Filed 8–9–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8191]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

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

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

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

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

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

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

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022,

prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia: Hampton, City of, Independent City.	515527	March 27, 1970, Emerg; January 15, 1971, Reg; August 16, 2011, Susp.	Aug. 16, 2011.	Aug. 16, 2011.
Region IV				
Alabama: Heflin, City of, Cleburne County.	010043	May 28, 1975, Emerg; July 5, 1982, Reg; August 16, 2011, Susp.	.....do*	do.
Mississippi:				
Mize, Town of, Smith County	280160	July 26, 1976, Emerg; January 1, 1986, Reg; August 16, 2011, Susp.	.....do	do.
Smith County, Unincorporated Areas	280306	June 8, 1990, Emerg; July 1, 1991, Reg; August 16, 2011, Susp.	.....do	do.
Taylorsville, Town of, Smith County	280161	July 28, 1975, Emerg; June 17, 1986, Reg; August 16, 2011, Susp.	.....do	do.
Region V				
Illinois:				
Ashkum, Village of, Iroquois County	170287	June 16, 1975, Emerg; April 20, 1979, Reg; August 16, 2011, Susp.	.....do	do.
Cissna Park, Village of, Iroquois County.	170289	June 13, 1975, Emerg; September 29, 1986, Reg; August 16, 2011, Susp.	.....do	do.
Crescent City, Village of, Iroquois County.	170291	December 26, 1974, Emerg; September 1, 1987, Reg; August 16, 2011, Susp.	.....do	do.
Gilman, City of, Iroquois County	170293	July 28, 1975, Emerg; September 1, 1987, Reg; August 16, 2011, Susp.	.....do	do.
Iroquois, Village of, Iroquois County	170793	April 11, 1975, Emerg; September 4, 1985, Reg; August 16, 2011, Susp.	.....do	do.
Iroquois County, Unincorporated Areas.	170731	December 17, 1973, Emerg; September 30, 1988, Reg; August 16, 2011, Susp.	.....do	do.
Milford, Village of, Iroquois County ...	170294	April 10, 1975, Emerg; September 29, 1986, Reg; August 16, 2011, Susp.	.....do	do.
Thawville, Village of, Iroquois County	170913	January 2, 1976, Emerg; August 1, 1986, Reg; August 16, 2011, Susp.	.....do	do.
Watseka, City of, Iroquois County	170297	December 10, 1974, Emerg; June 15, 1979, Reg; August 16, 2011, Susp.	.....do	do.
Woodland, Village of, Iroquois County.	170819	June 25, 1975, Emerg; September 30, 1988, Reg; August 16, 2011, Susp.	.....do	do.
Michigan:				
Alaiedon, Township of, Ingham County.	260670	April 9, 1976, Emerg; September 28, 1979, Reg; August 16, 2011, Susp.	.....do	do.
Aurelius, Township of, Ingham County.	261321	January 4, 2011, Emerg; N/A, Reg; August 16, 2011, Susp.	.....do	do.
Delhi, Charter Township of, Ingham County.	260088	September 15, 1975, Emerg; July 16, 1981, Reg; August 16, 2011, Susp.	.....do	do.
Lansing, Charter Township of, Ingham County.	260632	August 25, 1975, Emerg; February 4, 1981, Reg; August 16, 2011, Susp.	.....do	do.
Lansing, City of, Ingham County	260090	March 9, 1973, Emerg; March 2, 1981, Reg; August 16, 2011, Susp.	.....do	do.
Leroy, Township of, Ingham County	260906	April 19, 1993, Emerg; N/A, Reg; August 16, 2011, Susp.	.....do	do.
Leslie, City of, Ingham County	260091	July 25, 1975, Emerg; August 10, 1979, Reg; August 16, 2011, Susp.	.....do	do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Locke, Township of, Ingham County	260671	April 14, 1976, Emerg; August 10, 1979, Reg; August 16, 2011, Susp.	.....do	do.
Mason, City of, Ingham County	260092	April 24, 1975, Emerg; October 15, 1982, Reg; August 16, 2011, Susp.	.....do	do.
Meridian, Charter Township of, Ingham County.	260093	December 30, 1971, Emerg; February 2, 1977, Reg; August 16, 2011, Susp.	.....do	do.
Stockbridge, Township of, Ingham County.	261326	August 30, 2010, Emerg; N/A, Reg; August 16, 2011, Susp.	.....do	do.
Stockbridge, Village of, Ingham County.	260573	January 19, 1977, Emerg; September 4, 1986, Reg; August 16, 2011, Susp.	.....do	do.
Webberville, Village of, Ingham County.	260416	June 24, 1976, Emerg; August 10, 1979, Reg; August 16, 2011, Susp.	.....do	do.
White Oak, Township of, Ingham County.	260417	April 28, 1988, Emerg; July 16, 1990, Reg; August 16, 2011, Susp.	.....do	do.
Williamston, City of, Ingham County	260094	July 24, 1975, Emerg; April 1, 1982, Reg; August 16, 2011, Susp.	.....do	do.
Williamstown, Township of, Ingham County.	260095	January 27, 1977, Emerg; April 15, 1982, Reg; August 16, 2011, Susp.	.....do	do.
Minnesota:				
Benton County, Unincorporated Areas.	270019	August 13, 1974, Emerg; January 2, 1981, Reg; August 16, 2011, Susp.	.....do	do.
Foley, City of, Benton County	270020	May 2, 1974, Emerg; September 18, 1985, Reg; August 16, 2011, Susp.	.....do	do.
Royalton, City of, Benton County	270303	April 5, 1974, Emerg; March 28, 1980, Reg; August 16, 2011, Susp.	.....do	do.
Sartell, City of, Benton County	270460	July 5, 1974, Emerg; February 15, 1980, Reg; August 16, 2011, Susp.	.....do	do.
Sauk Rapids, City of, Benton County	270023	June 18, 1973, Emerg; October 14, 1977, Reg; August 16, 2011, Susp.	.....do	do.
St. Cloud, City of, Benton County	270456	March 31, 1972, Emerg; April 1, 1977, Reg; August 16, 2011, Susp.	.....do	do.
Ohio:				
Berkey, Village of, Lucas County	390901	N/A, Emerg; March 8, 2005, Reg; August 16, 2011, Susp.	.....do	do.
Byesville, Village of, Guernsey County.	390199	June 17, 1975, Emerg; February 17, 1989, Reg; August 16, 2011, Susp.	.....do	do.
Cumberland, Village of, Guernsey County.	390824	October 26, 1988, Emerg; February 17, 1989, Reg; August 16, 2011, Susp.	.....do	do.
Harbor View, Village of, Lucas County.	390702	October 8, 1976, Emerg; May 25, 1978, Reg; August 16, 2011, Susp.	.....do	do.
Holland, Village of, Lucas County	390659	March 13, 1975, Emerg; September 22, 1978, Reg; August 16, 2011, Susp.	.....do	do.
Lore City, Village of, Guernsey County.	390202	March 25, 1976, Emerg; February 17, 1989, Reg; August 16, 2011, Susp.	.....do	do.
Lucas County, Unincorporated Areas	390359	March 9, 1977, Emerg; March 16, 1983, Reg; August 16, 2011, Susp.	.....do	do.
Maumee, City of, Lucas County	390360	July 25, 1975, Emerg; March 28, 1980, Reg; August 16, 2011, Susp.	.....do	do.
Oregon, City of, Lucas County	390361	March 16, 1973, Emerg; March 15, 1978, Reg; August 16, 2011, Susp.	.....do	do.
Ottawa Hills, Village of, Lucas County.	390362	October 24, 1975, Emerg; June 4, 1980, Reg; August 16, 2011, Susp.	.....do	do.
Pleasant City, Village of, Guernsey County.	390203	April 7, 1976, Emerg; January 5, 1979, Reg; August 16, 2011, Susp.	.....do	do.
Quaker City, Village of, Guernsey County.	390853	August 28, 1980, Emerg; February 17, 1989, Reg; August 16, 2011, Susp.	.....do	do.
Sencecaville, Village of, Guernsey County.	390858	September 15, 1989, Emerg; September 15, 1989, Reg; August 16, 2011, Susp.	.....do	do.
Swanton, Village of, Lucas County ...	390632	N/A, Emerg; April 9, 1996, Reg; August 16, 2011, Susp.	.....do	do.
Sylvania, City of, Lucas County	390364	February 18, 1972, Emerg; July 5, 1977, Reg; August 16, 2011, Susp.	.....do	do.
Toledo, City of, Lucas County	395373	December 18, 1970, Emerg; June 4, 1980, Reg; August 16, 2011, Susp.	.....do	do.
Waterville, Village of, Lucas County	390637	April 9, 1975, Emerg; January 2, 1981, Reg; August 16, 2011, Susp.	.....do	do.
Whitehouse, Village of, Lucas County.	390639	August 27, 1975, Emerg; May 19, 1981, Reg; August 16, 2011, Susp.	.....do	do.
Wisconsin:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Lincoln County, Unincorporated Areas.	550585	March 8, 1976, Emerg; February 19, 1986, Reg; August 16, 2011, Susp.	.....do	do.
Merrill, City of, Lincoln County	555565	April 9, 1971, Emerg; July 20, 1973, Reg; August 16, 2011, Susp.	.....do	do.
Tomahawk, City of, Lincoln County ..	550235	November 29, 1974, Emerg; September 4, 1985, Reg; August 16, 2011, Susp.	.....do	do.
Region VI				
Texas:				
Brenham, City of, Washington County.	480648	December 31, 1974, Emerg; August 17, 1981, Reg; August 16, 2011, Susp.	.....do	do.
Huntsville, City of, Walker County	480639	January 20, 1975, Emerg; February 4, 1981, Reg; August 16, 2011, Susp.	.....do	do.
Montague County, Unincorporated Areas.	480939	August 30, 1982, Emerg; January 17, 1991, Reg; August 16, 2011, Susp.	.....do	do.
Nocona, City of, Montague County ...	480482	July 22, 1975, Emerg; November 21, 1978, Reg; August 16, 2011, Susp.	.....do	do.
Paris, City of, Lamar County	480427	February 25, 1972, Emerg; December 15, 1983, Reg; August 16, 2011, Susp.	.....do	do.
Reno, City of, Lamar County	481254	January 9, 1980, Emerg; September 28, 1982, Reg; August 16, 2011, Susp.	.....do	do.
Riverside, City of, Walker County	481044	June 28, 2000, Emerg; November 1, 2007, Reg; August 16, 2011, Susp.	.....do	do.
Walker County, Unincorporated Areas.	481042	August 18, 1978, Emerg; May 1, 1987, Reg; August 16, 2011, Susp.	.....do	do.
Washington County, Unincorporated Areas.	481188	January 16, 2001, Emerg; December 1, 2007, Reg; August 16, 2011, Susp.	.....do	do.
Region VII				
Iowa:				
Elgin, City of, Fayette County	190125	June 18, 1975, Emerg; August 4, 1987, Reg; August 16, 2011, Susp.	.....do	do.
Fayette County, Unincorporated Areas.	190866	November 27, 1990, Emerg; July 1, 1991, Reg; August 16, 2011, Susp.	.....do	do.
Fayette, City of, Fayette County	190376	April 27, 1978, Emerg; September 1, 1987, Reg; August 16, 2011, Susp.	.....do	do.
Maynard, City of, Fayette County	190377	September 29, 1976, Emerg; August 1, 1986, Reg; August 16, 2011, Susp.	.....do	do.
Oelwein, City of, Fayette County	190126	October 14, 1975, Emerg; July 4, 1988, Reg; August 16, 2011, Susp.	.....do	do.
Waucoma, City of, Fayette County ...	190381	July 15, 1983, Emerg; September 29, 1986, Reg; August 16, 2011, Susp.	.....do	do.
What Cheer, City of, Keokuk County	190179	January 28, 1976, Emerg; August 1, 1987, Reg; August 16, 2011, Susp.	.....do	do.
Nebraska:				
Butler County, Unincorporated Areas	310025	October 29, 1998, Emerg; N/A, Reg; August 16, 2011, Susp.	.....do	do.
Bruno, Village of, Butler County	310027	June 4, 1975, Emerg; January 1, 1987, Reg; August 16, 2011, Susp.	.....do	do.
Linwood, Village of, Butler County	310028	May 25, 1976, Emerg; January 1, 1987, Reg; August 16, 2011, Susp.	.....do	do.
Surprise, Village of, Butler County	310408	July 22, 2009, Emerg; N/A, Reg; August 16, 2011, Susp.	.....do	do.
Ulysses, Village of, Butler County	310029	May 6, 1975, Emerg; October 31, 1983, Reg; August 16, 2011, Susp.	.....do	do.

*.....do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: July 29, 2011

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2011–20279 Filed 8–9–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 11–76; FCC 11–114]

Assessment and Collection of Regulatory Fees for Fiscal Year 2011

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revises its Schedule of Regulatory Fees to recover an amount of $335,794,000 that Congress has required the Commission to collect for fiscal year 2011. The Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Effective September 9, 2011.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), FCC 11–114, MD Docket No. 11–76, adopted on July 21, 2011 and released on July 22, 2011.

I. Procedural Matters

A. Final Paperwork Reduction Act

1. This *Report and Order* does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Congressional Review Act Analysis

2. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[1]

C. Final Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act of 1980 (''RFA''),[2] the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') relating to this Report and Order. The FRFA is set forth in the section entitled Final Regulatory Flexibility Analysis.

II. Report and Order

Introduction

4. In this *Report and Order,* we conclude the Assessment and Collection of Regulatory Fees for Fiscal Year (''FY'') 2011 proceeding to collect $335,794,000 in regulatory fees for Fiscal Year (''FY'') 2011, pursuant to section 9 of the Communications Act of 1934, as amended (the ''Act''). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[3] The annual regulatory fee amount to be collected is established each year in the Commission's Annual Appropriations Act which is adopted by Congress and signed by the President and which funds the Commission.[4] In this annual regulatory fee proceeding, we retain many of the established methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during a September 2011 filing window in order to collect the required amount by the end of our fiscal year. Finally, we will initiate a further rulemaking that will update the record on regulatory fee rebalancing, as well as expand this inquiry to include new issues and services, by the end of this calendar year.

III. Discussion

5. On May 3, 2011, we released a *Notice of Proposed Rulemaking* (''*FY 2011 NPRM*'') seeking comment on regulatory fee issues for FY 2011.[5] The section 9 regulatory fee proceeding is an annual rulemaking process for the Commission to collect the required fee amount each year. In the *FY 2011 NPRM*, we proposed to retain the section 9 regulatory fee methodology used in prior fiscal years, except as discussed below. We received six comments and one reply comment.[6] We address the issues raised in our *FY 2011 NPRM* and these comments below.

TABLE—LIST OF COMMENTERS

Commenter	Abbreviated name
American Association of Paging Carriers.	''AAPC''
Raymond Awe	''Raymond Awe''
CTIA—The Wireless Association.	''CTIA''
PCIA—The Wireless Infrastructure Association.	''PCIA''
The United States Telecom Association.	''USTelecom''
Verizon Wireless	''Verizon''

TABLE—LIST OF REPLY COMMENTERS

Commenter	Abbreviated name
AT&T Inc	''AT&T''

A. FY 2011 Regulatory Fee Assessment Methodology

6. In our FY 2011 regulatory fee assessment, we will use the same section 9 regulatory fee assessment methodology adopted in FY 2010 and in prior years. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our FY 2011 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in the table below (Table—Calculation of FY 2011 Revenue Requirements and Pro-Rata Fees). To collect the $335,794,000 required by Congress, we allocated this amount across the various fee categories. Consistent with past practice, we then divided the various fee categories by their respective number of estimated payment units to

[1] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the CWAAA; *see* Pub. L. No. 104–121, Title II, 251, 110 Stat. 868.

[2] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Pub. L. No. 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (''CWAAA'').

[3] 47 U.S.C. 159(a).

[4] *See* The Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, for the appropriations act language specifying that the applicable level of funding for fiscal year 2011 continues to be the amount provided by the Consolidated Appropriations Act, 2010, Public Law 111–117, for agencies previously funded by that Act. The level set by Congress in the Consolidated Appropriations Act, 2010 for the Commission was $335,794,000 of offsetting collections to be assessed and collected by the Commission pursuant to Section 9 of the Communications Act.

[5] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Notice of Proposed Rulemaking,* 76 FR 30605 (May 26, 2011) (''*FY 2011 NPRM*'').

[6] *See* table of commenters and reply commenters.

determine the unit fee.[7] As in prior years, for cases involving small fees, *e.g.*, licenses that are renewed over a multiyear term, we divided the resulting unit fee by the term of the license and then rounded these unit fees consistent with the requirements of section 9(b)(2) of the Act.

TABLE—CALCULATION OF FY 2011 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	FY 2011 payment units	Years	FY 2010 revenue estimate	Pro-rated FY 2011 revenue requirement	Computed new FY 2011 regulatory fee	Rounded new FY 2011 regulatory fee	Expected FY 2011 revenue
PLMRS (Exclusive Use)	1,200	10	480,000	495,845	41	40	480,000
LMRS (Shared use)	10,600	10	2,300,000	2,375,921	22	20	2,120,000
Microwave	10,200	10	2,375,000	2,324,270	23	25	2,550,000
218–219 MHz (Formerly IVDS)	3	10	1,950	2,015	67	65	1,950
Marine (Ship)	6,700	10	800,000	774,757	12	10	670,000
GMRS	9,300	5	242,500	284,078	6	5	232,500
Aviation (Aircraft)	4,600	10	230,000	361,553	8	10	460,000
Marine (Coast)	265	10	119,250	127,835	48	50	132,500
Aviation (Ground)	1,100	10	150,000	154,952	14	15	165,000
Amateur Vanity Call Signs	14,600	10	196,840	207,635	1.42	1.42	207,320
AM Class A [4a]	66	1	253,300	256,832	3,891	3,900	257,400
AM Class B [4b]	1,439	1	3,053,700	3,075,578	2,137	2,125	3,057,875
AM Class C [4c]	918	1	1,078,650	1,090,083	1,187	1,175	1,078,650
AM Class D [4d]	1,637	1	3,589,125	3,631,802	2,219	2,225	3,642,325
FM Classes A, B1 & C3 [4e]	3,114	1	7,372,000	7,652,108	2,457	2,450	7,629,300
FM Classes B, C, C0, C1 & C2 [4f]	3,111	1	9,308,775	9,400,580	3,022	3,025	9,410,775
AM Construction Permits	90	1	43,680	44,212	491	490	44,100
FM Construction Permits	151	1	105,300	101,925	675	675	101,925
Satellite TV	133	1	163,800	167,270	1,258	1,250	166,250
Satellite TV Construction Permit	3	1	2,025	2,015	672	670	2,010
VHF Markets 1–10	20	1	1,631,000	1,692,381	84,619	84,625	1,692,500
VHF Markets 11–25	26	1	1,708,425	1,772,526	68,174	68,175	1,772,550
VHF Markets 26–50	36	1	1,404,150	1,457,127	40,476	40,475	1,457,100
VHF Markets 51–100	52	1	1,140,000	1,182,936	22,749	22,750	1,183,000
VHF Remaining Markets	127	1	747,250	774,447	6,098	6,100	774,700
VHF Construction Permits [1]	2	1	18,375	12,200	6,100	6,100	12,200
UHF Markets 1–10	113	1	3,776,175	3,915,430	34,650	34,650	3,915,450
UHF Markets 11–25	107	1	3,398,475	3,524,319	32,938	32,950	3,525,650
UHF Markets 26–50	144	1	2,910,600	3,016,311	20,947	20,950	3,016,800
UHF Markets 51–100	238	1	2,829,750	2,932,290	12,321	12,325	2,933,350
UHF Remaining Markets	264	1	835,700	866,787	3,283	3,275	864,600
UHF Construction Permits [1]	10	1	36,600	32,750	3,275	3,275	32,750
Broadcast Auxiliaries	26,850	1	275,000	284,078	11	10	268,500
LPTV/Translators/Boosters/Class ATV	3,607	1	1,411,000	1,425,553	395	395	1,424,765
CARS Stations	470	1	173,250	174,578	371	370	173,900
Cable TV Systems	63,400,000	1	57,405,000	58,633,597	0.92482	0.93	58,962,000
Interstate Telecommunication Service Providers	$39,500,000,000	1	151,117,000	148,100,156	0.0037494	0.00375	148,125,000
CMRS Mobile Services (Cellular/Public Mobile)	298,000,000	1	50,940,000	51,562,378	0.1730	0.17	50,660,000
CMRS Messag. Services	4,200,000	1	480,000	376,000	0.0800	0.080	336,000
BRS [2]	1,690	1	514,600	523,900	310	310	523,900
LMDS	520	1	158,100	161,200	310	310	161,200
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	3,247,195	1	1,130,233	1,143,849	.352	.35	1,136,518
Submarine Cable Providers (see chart in Appendix C) [3]	39.375	1	7,983,860	8,080,736	205,225	205,225	8,080,734
Earth Stations	3,575	1	864,000	878,575	246	245	875,875
Space Stations (Geostationary)	87	1	11,129,475	11,429,445	131,373	131,375	11,429,625
Space Stations (Non-Geostationary)	6	1	828,300	850,528	141,755	141,750	850,500
Total Estimated Revenue to be Collected			336,712,213	337,295,342			336,599,048
Total Revenue Requirement			335,794,000	335,794,000			335,794,000

[7] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. In some instances, the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (''CMRS'') Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider (''ITSP'') fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, or subscriber fee.

TABLE—CALCULATION OF FY 2011 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	FY 2011 payment units	Years	FY 2010 revenue estimate	Pro-rated FY 2011 revenue requirement	Computed new FY 2011 regulatory fee	Rounded new FY 2011 regulatory fee	Expected FY 2011 revenue
Difference			918,213	1,501,342			805,048

[1] The FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[3] The chart at the end of Table—FY 2011 Schedule of Regulatory Fees lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order (MD Docket No. 08–65, RM–11312), released March 24, 2009; and *Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Notice of Proposed Rulemaking and Order (MD Docket No. 09–65, MD Docket No. 08–65), released on May 14, 2009.

[4] The fee amounts listed in the column entitled "Rounded New FY 2011 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2011 regulatory fees for AM/FM radio station are listed on a grid located in Table—FY 2011 Schedule of Regulatory Fees.

7. In calculating the FY 2011 regulatory fees listed in Table—FY 2011 Schedule of Regulatory Fees (see table below), we adjusted the FY 2011 list of payment units (see Table—Sources of Payment Unit Estimates for FY 2011 below) based upon licensee databases, industry and trade group projections, as well as prior year payment information. In some instances, Commission licensee databases are used; in other instances, actual prior year payment records and/or industry and trade association projections are used in determining the payment units.[8] Where appropriate, we adjusted and rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as waivers and exemptions that may be filed in FY 2011, and fluctuations in the number of licenses or station operators due to economic, technical, or other reasons. Our estimated FY 2011 payment units, therefore, are based on several variable factors that are relevant to each fee category. The fee rate may also be rounded or adjusted slightly to account for these variables.

TABLE—FY 2011 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	25
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	50
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.42
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90).	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 21)	310
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	310
AM Radio Construction Permits	490
FM Radio Construction Permits	675
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	84,625
Markets 11–25	68,175
Markets 26–50	40,475
Markets 51–100	22,750
Remaining Markets	6,100

[8] The databases we consulted are the following: The Commission's Universal Licensing System ("ULS"), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"). We also consulted reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast* and *Annual CMRS Competition Report*, as well as industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc.

TABLE—FY 2011 SCHEDULE OF REGULATORY FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $'s)
Construction Permits	6,100
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	34,650
Markets 11–25	32,950
Markets 26–50	20,950
Markets 51–100	12,325
Remaining Markets	3,275
Construction Permits	3,275
Satellite Television Stations (All Markets)	1,250
Construction Permits—Satellite Television Stations	670
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	395
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	370
Cable Television Systems (per subscriber) (47 CFR part 76)	.93
Interstate Telecommunication Service Providers (per revenue dollar)	.00375
Earth Stations (47 CFR part 25)	245
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	131,375
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	141,750
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.35
International Bearer Circuits—Submarine Cable	[1]

[1] See Table Below.

FY 2011 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1, & C3	FM Classes B, C, C0, C1 & C2
<= 25,000	$700	$575	$525	$600	$675	$850
25,001–75,000	1,400	1,150	800	900	1,350	1,500
75,001–150,000	2,100	1,450	1,050	1,500	1,850	2,750
150,001–500,000	3,150	2,450	1,575	1,800	2,875	3,600
500,001–1,200,000	4,550	3,750	2,625	3,000	4,550	5,300
1,200,001–3,000,000	7,000	5,750	3,950	4,800	7,425	8,500
> 3,000,000	8,400	6,900	5,000	6,000	9,450	11,050

INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE

Submarine cable systems (capacity as of December 31, 2010)	Fee amount	Address
< 2.5 Gbps	$12,825	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	25,650	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	51,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	102,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	205,225	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Table—Sources of Payment Unit Estimates for FY 2011

In order to calculate individual service fees for FY 2011, we adjusted FY 2010 payment units for each service to more accurately reflect expected FY 2011 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (''ULS''), International Bureau Filing System (''IBFS''), Consolidated Database System (''CDBS'') and Cable Operations and Licensing System (''COALS''), as well as reports generated within the Commission such as the Wireline Competition Bureau's Trends in Telephone Service and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We sought verification for these estimates from multiple sources and, in all cases; we compared FY 2011 estimates with actual FY 2010 payment units to ensure that our revised

estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2011 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2011 payment units are based on FY 2010 actual payment units, it does not necessarily mean that our FY 2011 projection is exactly the same number as in FY 2010. We have either rounded the FY 2011 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land and Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (''WTB'') projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 2010 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 2010 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
Broadcast Auxiliaries	Based on actual FY 2010 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2010 payment units.
LMDS	Based on WTB reports and actual FY 2010 payment units.
Cable Television Relay Service (''CARS'') Stations	Based on data from Media Bureau's COALS database and actual FY 2010 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2010 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–Q data for the four quarters of calendar year 2010, the Wireline Competition Bureau projected the amount of calendar year 2009 revenue that will be reported on 2011 FCC Form 499–A worksheets in April, 2011.
Earth Stations	Based on International Bureau (''IB'') licensing data and actual FY 2010 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2010 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees.
Submarine Cable Licenses	Based on IB license information.

8. When calculating the fee methodology for AM and FM radio stations, we consider many factors, such as facility attributes and the population served by each station. The calculation of the population served is determined by coupling current United States Census Bureau data with technical and engineering data, as detailed in the table below (Table—Factors, Measurements, and Calculations That Go into Determining Station Signal Contours and Associated Population Coverages). These population counts, along with the station's class and type of service, are the basis for determining regulatory fees. Although the 2010 Census data has been completed, the data is still subject to revisions. Also, because FY 2011 regulatory fees are determined on the basis of the station's attributes as of October 1, 2010, it would be inappropriate to apply incomplete 2010 Census data in determining FY 2011 regulatory fees for radio stations. Therefore, we will apply 2010 Census data in determining the population counts of radio stations as of October 1, 2011, as part of our calculations of FY 2012 regulatory fees.

Table—Factors, Measurements, and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (''RMS'') figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (''ERP'') (kW) and respective height above average terrain (''HAAT'') (m) combination was used. Where the antenna height above mean sea level (''HAMSL'') was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the

Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

B. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters

9. The digital transition to full-service television stations was completed on June 12, 2009, but the digital transition for Low Power, Class A, and TV Translators/Boosters remains voluntary, and there is presently no set date for the completion of this transition. Historically, the discussion of digital transition conversion with respect to regulatory fees has applied only to full-service television stations. Hence, the ''digital only'' exemption does not impact this class of regulatees. Because the digital transition in the Low Power, Class A, and TV Translators/Booster facilities is still voluntary and the transition will occur over a period time, some facilities may still be in the process of converting from an analog to a digital service. During this transition period, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. Therefore, for regulatory fee purposes, we conclude that a fee will be assessed for each facility operating either in an analog or digital mode. In instances in which a licensee is operating in both an analog and digital mode as a simulcast, a single regulatory fee will be assessed for this analog facility that has a digital companion channel. As greater numbers of facilities convert to digital mode, the Commission will provide revised instructions on how regulatory fees will be assessed.

C. Commercial Mobile Radio Service Messaging Service

10. Commercial Mobile Radio Service (''CMRS'') Messaging Service, which replaced the CMRS One-Way Paging fee category in 1997, includes all narrowband services.[9] Since 1997, the number of subscribers has declined from 40.8 million to 4.9 million, and there does not appear to be any sign of recovery to the subscriber levels of 1997–1999.[10] We sought comment on whether to continue to maintain the fee at the existing level of $.08 per subscriber. We received one comment from the American Association of Paging Carriers (''AAPC''). AAPC contends that retaining the $0.08 per unit for CMRS Messaging is the minimum appropriate action for the Commission to undertake.[11] Moreover, AAPC believes that after the Commission reviews its regulatory fee methodology, the Commission will find, as the paging industry believes it will, that the fee rate for the paging industry should be reduced.[12] We agree with AAPC that the prevailing circumstances in FY 2003 still exist today,[13] and conclude that the FY 2011 CMRS Messaging regulatory fee should remain at a rate of $0.08 per subscriber.

D. Private Land Mobile Radio Service (''PLMRS'')

11. PLMRS systems are used by licensees, generally companies, local governments, and other organizations, for their own communications needs. The services included in PLMRS are Public Safety, Industrial/Business, Private Land Mobile Paging, and Radiolocation. In their comments, PCIA—The Wireless Infrastructure Association, contends that because the number of Private Land Mobile Radio Service licenses has declined over 30 percent between 2006 and 2010,[14] it is inequitable to raise the ten-year license fee from $20 per year to $25 per year. Furthermore, PCIA asserts that PLMRS is a declining industry, and the Commission should ''exercise its discretion in assessing how to regulate fees on industries with declining unit bases,'' particularly in those instances where it is hard to pass on these regulatory fee costs to its customers.[15]

12. We agree with PCIA that those industries that are declining and also lack the ability to effectively pass the regulatory fees onto its customers should be given special consideration for fee relief.[16] We note that the paging industry is in a similar situation with a declining subscriber base, and we have maintained their per unit regulatory fee at FY 2002 levels. Although PCIA projects the number of PLMRS licenses to increase slightly in 2011,[17] the number of PLMRS licenses issued in FY 2011 is significantly lower than in FY 2004 and FY 2005 where the estimated number of PLMRS licenses issued was over four times greater.[18] As a result, we believe the Commission should exercise its discretion to maintain the FY 2011 regulatory fee at $20 per year. Based on an anticipated increase of 14 percent in the number of licenses,[19] we will increase our unit estimate from 9,300 to 10,600, which will reduce the per year fee to $22. However, we note that if it were not for our rules regarding rounding to the nearest $5, the actual fee for PLMRS (Shared) would be $22 per year, and not $20 per year. But because of our rounding rules, we conclude that the FY 2011 regulatory fee rate for the PLMRS (Shared) fee category is $20 per year for a ten-year license.

E. Interstate Telecommunications Service Provider (ITSP)

13. In our FY 2011 Regulatory Fee *Notice of Proposed Rulemaking,* we sought comment on our proposal to provide relief to the ITSP industry by assessing ITSP regulatory fees on all ITSP revenues that are reported on FCC Form 499–A, Lines 412(e), 420(d), and 420(e), the lines upon which the Commission has traditionally assessed ITSP regulatory fees. We received three comments and one reply comment.[20] In

[9] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997,* MD Docket No. 96–186, Report and Order, 12 FCC Rcd 17161, 17184–85, para. 60 (1997) (*''FY 1997 Report and Order''*).

[10] Between FY 1997 and FY 2010, the subscriber base in the paging industry declined 89 percent from 40.8 million to 4.9 million subscribers, according to FY 2010 collections data as of September 30, 2010.

[11] *See* American Association of Paging Carriers comments at page 2.

[12] *AAPC* comments at page 3.

[13] Beginning in FY 2003, the Commission maintained the paging regulatory fee rate at $.08 per subscriber, the same level as in FY 2002, and it has maintained this level of $.08 per subscriber for all subsequent years. AAPC (at page 3) acknowledges that the circumstances that prompted the Commission to act in maintaining the fee rate at $.08 per subscriber still exist today.

[14] *See* PCIA—The Wireless Infrastructure Association comments at page 2.

[15] *PCIA* comments at page 5.

[16] *PCIA* comments at page 5.

[17] *PCIA* comments at page 2.

[18] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Report and Order,* 19 FCC Rcd 11,662 MD Docket No. 04–73 in Attachment C (2004) (*FY 2004 Report and Order*), and Assessment and Collection of Regulatory Fees for Fiscal Year 2005, *Report and Order and Order on Reconsideration,* 20 FCC Rcd 12259, 12264 MD Docket No. 05–59, 04–73 in Attachment C (2005) (*FY 2005 R&O and Order on Reconsideration*).

[19] *PCIA* comments at page 2.

[20] In the FY 2008 *Report and Order* and *Further Notice of Proposed Rulemaking* (*''FY 2008 FNPRM''*) (73 FR 50285 (August 26, 2008) (2008)), we asked for comment on this same issue, noting that the marketplace for ITSP service has changed since the fees were set and asking interested parties to comment on how the market had changed and the methodology we should use to determine the revision to ITSP's proportionate share of regulatory fees. We also asked for current information about

its comments, the United States Telecom Association (''USTelecom'') urges the Commission to take a comprehensive approach to reforming the regulatory fee structure, including an updated full-time employee (FTE) analysis, reallocation of the costs of the support bureaus, reexamination of the underlying assumptions of the current regulatory fee structure, and incorporation of changes that have occurred in the communications industry over time.[21] While USTelecom supports limitations in the ITSP fee increase, it provides no support for action to effectuate such relief short of a complete overhaul of our regulatory fee methodology and the assumptions underlying it.[22] CTIA—The Wireless Association (''CTIA'') opposes the proposal to assess all ITSP revenues, arguing that the Commission lacks both legal authority and valid policy justification for its proposal.[23] CTIA also interprets the Commission's proposal as imposing a duplicative fee assessment on the CMRS industry, arguing that the move would result in an increase in regulatory fees of $108 million on CMRS providers in addition to over $52 million in fees that CMRS providers will pay on their subscriber fees.[24] CTIA urges use of the same methodology as the Commission used last year—spreading the regulatory fees across other fee categories—while the Commission engages in a comprehensive review of its FTEs by core bureau.[25] In separate comments, Verizon Wireless also opposes the Commission's proposal to apply the ITSP fee to the ITSP revenues of CMRS licensees.[26] Finally, in its reply comments, AT&T supports the comments of USTelecom and CTIA.[27]

14. First, it is necessary to address any misconception about the impact, in terms of increased regulatory fees, our proposal would have on CMRS licensees. Contrary to CTIA's assertions, the *Notice of Proposed Rulemaking* did not propose assessing $108 million from wireless providers in addition to $52 million in regulatory fees that CMRS licensees currently pay.[28] As the ''Table—Calculations of FY 2011 Revenue Requirements and Pro-Rata Fees'' illustrates, the Commission proposed to collect $52 million from CMRS providers and $148 million from ALL ITSP providers; from within the $148 million assessed to all ITSP revenues, the Commission estimated that only $7.2 million would be derived from the ITSP revenues of predominantly non-ITSP providers (*e.g.* wireless, satellite, etc.)—this $7.2 million is the resulting additional amount in regulatory fees that is proposed in our *NPRM*'s proposed ITSP rate of $.00361, which is based on approximately $2 billion in ITSP revenues reported by these entities on Form 499–A Lines 412(e), 420(d), and 420(e)—ITSP revenue on which they currently do not pay regulatory fees. Assessing this estimated $2 billion in ITSP revenues would, in conjunction with the additional relief measure proposed in the *NPRM,* help reduce the impact of the fee burden on all ITSP payers by reducing the applicable ITSP fee rate from $0.00402 to $0.00361.

15. We are unpersuaded that assessing all ITSP revenues reported on Lines 412(e), 420(d), and 420(e) on FCC Form 499–A exceeds our statutory authority under section 159(b)(2)(A). However, we acknowledge that the comments filed by USTelecom, CTIA, Verizon Wireless, and AT&T raise important concerns about the need for a more comprehensive approach to regulatory fee reform.[29] As stated in the *NPRM*, we fully intend to engage in that process as expeditiously as possible.[30] To that end, it is important that today we take only those measured steps necessary to complete the FY 2011 regulatory fee assessment, so that we can complete the regulatory fee assessment and collection in a timely manner. Our proposal in the *NPRM* to provide some measure of regulatory fee relief for ITSP providers has two components: (1) A 5.6 percent assessment across all other fee categories, and (2) an assessment of an estimated $2 billion in ITSP revenues reported by non-ITSP providers. Of these two components, we will effectuate only one: A 5.6 percent assessment across all other fee categories. We will not, at this time, assess an estimated $2 billion in ITSP revenues reported by non-ITSP providers.

16. Since we have already assessed a 5.6 percent assessment across all other fee categories to provide some measure of relief to the applicable ITSP rate, we will reduce the proposed ITSP revenue base by $2.0 billion (from $41 billion to $39.0 billion), and re-calculate the ITSP fee rate on a revenue base of $39 billion, as it would be untenable to pass on any further increases across all other fee categories. This approach provides some level of relief for the ever-increasing ITSP rate, yet leaves the issue of whether all providers who report ITSP revenues should pay on those revenues to be addressed in a broader context of regulatory fee reform.

17. This limited, temporary adjustment for FY 2011 produces an equitable result. If we provided no relief to limit the FY 2011 ITSP fee rate, the fee rate applicable to ITSP revenues would have been $.00402 per revenue dollar, an increase of 15.2 percent from FY 2010 rates. Had we provided the full measure of relief proposed in the *NPRM,* the ITSP fee rate would have reduced to $.00361 per revenue dollar, an increase of 3.4 percent from FY 2010 rates. However, since, for the reasons stated above, we take only limited action to reduce the increase to the ITSP rate, the action we take today will result in an ITSP fee rate of $.00375 per revenue dollar, a 7.5 percent increase from FY 2010 rates.[31] This result is equitable not only for the ITSP industry, but also for the other fee categories that are bearing the fee burden associated with providing such relief. We conclude, therefore, that the FY 2011 ITSP regulatory fee rate is $.00375 per revenue dollar.

F. Amateur Radio Vanity Call Signs

18. We received a general comment from Raymond Awe regarding the regulatory fees paid on Amateur Radio Vanity Call Signs. Mr. Awe urges the Commission to keep the fee amount minimal, and to consider assessing a Vanity fee only on the first issue of the Vanity call sign or change in call sign.[32]

19. The Commission tries to keep the regulatory fee for Vanity call signs as minimal as possible. Between FY 2007 and FY 2010, the regulatory fee for Vanity call signs increased from $1.17 (per year) to $1.33 (per year), an

the number of access lines, noting the success of the numbers-based approach on which CMRS regulatory fees are based. These issues remain outstanding, and we will include comments filed in response to the *FY 2008 FNPRM* in the further examination of these issues discussed in paragraph 27 of this document.

[21] *See* comments of USTelecom at page 1.

[22] *See* comments of USTelecom at page 3.

[23] *See* CTIA comments at page 1.

[24] *See* CTIA comments at page 8.

[25] *See* CTIA comments at pages 2–3.

[26] *See* Verizon Wireless comments at page 3.

[27] *See* AT&T reply comments at page 2.

[28] *See* CTIA comments at page 8.

[29] *See* para. 27 *supra.* This same argument was made by several commenters in response to the *FY2008 FNPRM* (73 FR 50285 (August 26, 2008) (2008)).

[30] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2011, MD Docket 11–76, *Notice of Proposed Rulemaking,* 76 FR 30605 (May 26, 2011) at para. 22 (2011) (''*FY 2011 NPRM*'').

[31] In addition to reducing the FY 2011 ITSP revenue base from $41.0 billion to $39.0 billion because of our retraction, we were able to increase the FY 2011 ITSP revenue base from $39.0 billion to $39.5 billion because our more recent data estimates showed a slight increase in revenues from our previous estimate (March 2011).

[32] *See* comments of Raymond Awe at page 1.

increase of $0.16 per year or $1.60 over a ten-year license period.[33] We do not believe this increase is inequitable, and the Commission will continue its efforts to keep this fee as minimal as possible. Regarding Mr. Awe's recommendation to assess regulatory fees only at first issue or at the time of a change in call sign, the fees that are collected from Vanity call signs are used to offset the cost of monitoring and researching new call sign requests to prevent the issuance of duplicate call signs. More than likely, fees that are collected only on new issues and at the time of changes in call signs will not generate sufficient revenues to offset the cost of managing and monitoring this work at the Commission. Therefore, we conclude that the basis upon which the Commission collects fees on Amateur Radio Vanity call signs will not change.

G. Fee Waiver Policies

20. In our FY 2011 Notice of Proposed Rulemaking, we stated that as our rules expressly provide, petitions for waiver of a regulatory fee must be accompanied by the required fee ''unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.'' [34] Similarly, petitions for reduction of fees filed with less than the full fee due must be accompanied by a request for deferral ''supported by documentation of financial hardship.'' [35] However, citing § 1.1166 (b) of the rules, which states that ''Deferrals of fees will be granted for a period of six months following the date that the fee is initially due,'' it can be argued that, even where supporting documentation of financial hardship is not provided, a regulatee can delay its payment of the fees owed for up to six months simply by requesting the deferral.[36] That argument is inconsistent with §§ 1.1166 (c) and (d) of our rules, which provide that petitions for waivers or reductions will be dismissed if they are not accompanied by the full fee owed, unless the regulatee requests a deferral of payment supported by documentation of financial hardship.[37] A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay. We sought comment on the proposal to amend § 1.1166 (b) of the rules [38] to read, ''Deferrals of fees, if granted, will be for a designated period of time not to exceed six months.'' We received no comments or reply comments. Therefore, § 1.1166(b) of the rules [39] is amended to read, ''Deferrals of fees, if granted, will be for a designated period of time not to exceed six months.''

H. Administrative and Operational Issues

21. In FY 2009, the Commission implemented several changes in procedures which simplified the payment and reconciliation processes of FY 2009 regulatory fees. These changes proved to be very helpful to both licensees and to the Commission. In FY 2011, the Commission will promote greater use of technology (and less use of paper) to improve the regulatory fee notification and collection process. We sought general comment on the specific initiatives discussed in the paragraphs below. We received no specific comments or reply comments on any steps to take to promote greater use of technology in collecting regulatory fees. The Commission will continue to promote greater efficiency in its regulatory fee notification and collection process.

1. Mandatory Use of Fee Filer

22. In FY 2009, we instituted a mandatory filing requirement using the Commission's electronic filing and payment system (also known as ''Fee Filer'').[40] Licensees filing their annual regulatory fee payments were required to begin the process by entering the Commission's Fee Filer system with a valid FRN and password.[41] This change was beneficial to both licensees and to the Commission. For licensees, the mandatory use of Fee Filer eliminates the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format made it much easier to process payments more efficiently and effectively. We sought comment on how to improve the mandatory use of Fee Filer for filing annual regulatory fees. We received no specific comments or reply comments on this issue. The mandatory use of Fee Filer does not mean that licensees are expected to pay only through Fee Filer—it is only mandatory for licensees to begin the process of filing their annual regulatory fees using Fee Filer.

2. Notification and Collection of Regulatory Fees

a. Pre-bills

23. In prior years, the Commission mailed pre-bills via surface mail to licensees in select regulatory fee categories: Interstate telecommunications service providers (''ITSPs''), Geostationary (''GSO'') and Non-Geostationary (''NGSO'') satellite space station licensees,[42] holders of Cable Television Relay Service (''CARS'') licenses, and Earth Station licensees.[43] The remaining regulatees did not receive pre-bills. In our FY 2009 Report and Order, the Commission decided to make the information contained in these pre-bills viewable in Fee Filer, rather than mailing pre-bills out to licensees via surface mail.[44] In FY 2011, the Commission proposed to continue its practice of not mailing out hardcopy annual regulatory fee pre-bills, and instead place the pre-bill information on the Commission's Web site for licensees to access through the Commission's electronic filing and

[33] *See* Assessment and Collection of Regulatory Fees for Fiscal Year FY 2007, MD Docket 07–81, *Report and Order,* 22 FCC Rcd 15712 in Attachment C (''*FY 2007 R&O*'') and Assessment and Collection of Regulatory Fees for Fiscal Year FY 2010, MD Docket 10–87, *Report and Order,* 25 FCC Rcd 9278 in Appendix B (''*FY 2010 R&O*'').

[34] 47 CFR 1.1166(c).

[35] 47 CFR 1.1166(d).

[36] Hypothetically speaking, the current rule can be interpreted to provide a regulatee an opportunity to file a waiver and a deferral on the fee due date, and not make a regulatory fee payment for a period of up to six months.

[37] 47 CFR 1.1166(c) and (d) (requests for waivers and reductions of fees ''that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, *supported by documentation of the financial hardship.*''

[38] 47 CFR 1.1166(b).

[39] 47 CFR 1.1166(b).

[40] *FY 2009 Report and Order* at paras. 20 and 21.

[41] Therefore, it is very important for licensees to have a current and valid FRN address on file in the Commission's Registration System (CORES).

[42] Geostationary orbit space station (''GSO'') licensees received regulatory fee pre-bills for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.,* were not functioning as a spare satellite). Non-geostationary orbit space station (''NGSO'') licensees received regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

[43] A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. See also 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[44] *See FY 2009 Report and Order* at 24, 26.

payment system (''Fee Filer''). Regulatees can also look to the Commission's Web site for information on upcoming events and deadlines relating to regulatory fees. We sought comment on other changes to our system of electronic notification that would more efficiently and effectively inform regulatees of information and procedures pertaining to regulatory fees. We received no specific comments or reply comments on this issue. The Commission will continue its efforts to improve its information and procedures relating to regulatory fees.

IV. Procedural Matters

24. Included below are procedural items as well as our current payment and collection methods which we have revised over the past several years to expedite the processing of regulatory fee payments. We do not propose changes to these procedures. Rather, we include them here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

A. Public Notices and Fact Sheets

25. Each year we post public notices and fact sheets pertaining to regulatory fees on our Web site. These documents contain information about the payment due date and relevant regulatory fee payment procedures. We will continue to post this information on *http://www.fcc.gov/fees/regfees.html,* but as in previous years, we will not send out public notices and fact sheets to regulatees *en masse.*

B. Assessment Notifications

1. Media Services Licensees

26. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.[45] These notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative to be more electronic and paperless.[46] In our *FY 2010 Notice of Proposed Rulemaking*, we proposed to discontinue mailing the media notifications beginning in FY 2011, relying instead on information on the Commission's Web site and the use of the Commission-authorized Web site at *http://www.fccfees.com.*[47] We kept the comment and reply comment period open until September 30, 2010 to be receptive to the needs of media licensees. We received no comments or reply comments on this particular issue. Therefore, we conclude that beginning in FY 2011 the Commission will discontinue mailing hardcopy notification assessment letters to media licensees.

2. CMRS Cellular and Mobile Services Assessments

27. As we have done in prior years, our procedures for conveying CMRS subscriber counts to providers are as follows. We will mail an initial assessment letter to Commercial Mobile Radio Service (CMRS) providers using data from the Numbering Resource Utilization Forecast (''NRUF'') report that is based on ''assigned'' number counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out'').[48] The letter will include a listing of the carrier's Operating Company Numbers (''OCNs'') upon which the assessment is based.[49] The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

28. A carrier wishing to revise their subscriber count can access Fee Filer after they receive their initial CMRS assessment letter and revise their count. Providers should follow the prompts in Fee Filer to record their subscriber revisions, along with any supporting documentation.[50] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will attempt to contact the provider so that the provider will have an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response or correction to the initial assessment letter, or we do not reverse the disapproval of the provider's revised count submission, we will expect the fee payment to be based on the number of subscribers listed on the initial assessment letter. Once the timeframe for revision has passed, the subscriber counts will be finalized. These subscriber counts will then be the basis upon which CMRS regulatory fees will be expected. Providers will be able to view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

29. Because some carriers do not file the NRUF report, they may not receive an initial letter of assessment. In these instances, the carriers should compute their fee payment using the standard methodology[51] that is currently in place for CMRS Wireless services (*e.g.*, compute their subscriber counts as of December 31, 2010), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

3. Submarine Cable Allocation

30. The Commission collects a revenue amount each year based on a Congressional mandate. Because the dollar amount differs each year, a revenue apportionment is necessary each year to determine the projected regulatory fee revenue that is to be collected from submarine cable providers and from terrestrial/satellite facilities.[52] Since FY 2009, the Commission has used the 87.4/12.6 percent allocation proposed in the Consensus Proposal as the percentage upon which to determine the regulatory fee revenue amounts for submarine cable providers and terrestrial/satellite facilities, respectively.[53] Each year, the Commission reserves the right to revise this 87.4/12.6 allocation. Although we will continue to review this allocation as part of our annual regulatory fee proceeding, we do not at this time find

[45] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee), but it is not entered into the Commission's accounting system as a current debt.

[46] Some of those refinements have been to provide licensees with a Commission-authorized Web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. The notifications also provide licensees with a telephone number to call in the event that they need customer assistance.

[47] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Report and Order, 25 FCC Rcd 9278 at para. 42 (2010) (''*FY 2010 Report and Order*'').

[48] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket Nos. 05–59 and 04–73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38–44 (2005).

[49] *Id.*

[50] In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

[51] *See, e.g.*, Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2010* at 1 (rel. September 2010).

[52] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 at n. 35 (2009) (''*Submarine Cable Order*'').

[53] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301 at para. 8 (2009) (''*FY 2009 Report and Order*'').

any basis to alter the 87.4/12.6 percent revenue allocation for 2011 regulatory fees.

C. Re-Assessment of Regulatory Fee Issues in a Further Notice of Proposed Rulemaking

31. Since 1994 when the first regulatory fees were collected, the communications industry has undergone a rapid transformation. The current basis of how regulatory fees are assessed, however, has changed only slightly since its inception in 1994.[54] In FY 2008, the Commission released a *Further Notice of Proposed Rulemaking* which identified some of the issues raised by commenters with regard to the need for fundamental reform of our regulatory fee assessment methodology.[55] From this rulemaking, the Commission has already acted on three of the issues: (1) A change in the bearer circuit methodology for calculating regulatory fees, (2) the elimination of two regulatory fee categories, the *International Public Fixed Radio* and *International High Frequency Broadcast Stations*, and (3) the conversion of UHF and VHF Television stations from analog to digital television.[56] In our FY 2010 Regulatory Fees *Report & Order*, we stated that in a future proceeding, we will ''further examine the nature and extent of all changes that need to be made to our regulatory fee schedule and calculations. In a separate and forthcoming action, we will call for comment on issues including, but not limited to, how changes in the telecommunications marketplace may warrant rebalancing of regulatory fees among existing service providers * * *''[57] In response to our *FY 2011 Notice of Proposed Rulemaking*, we have heard the call again from commenters and reply commenters to re-examine our regulatory fee structure. As our commitment to this ''forthcoming action'', the Commission will by the end of calendar year 2011, initiate a further rulemaking that will update the record on regulatory fee rebalancing, as well as expand this inquiry to include new issues and services not covered by the 2008 *Further Notice of Proposed Rulemaking*, such as whether and how to re-assess the regulatory fee burden of all fee categories, whether to incorporate 499–A wireless revenue in the calculation of ITSP regulatory fees, and whether to eliminate the regulatory fee portion (but not the application fee portion) of General Mobile Radio Service (GMRS).

D. Streamlined Regulatory Fee Payment Process

1. Cable Television Subscribers

32. We will continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to report cable subscriber counts on a per community unit identifier (''CUID'') basis.

2. CMRS Cellular and Mobile Providers

33. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment, instead allowing CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.[58] We will continue this practice in FY 2011. In FY 2007, we consolidated the CMRS cellular and CMRS mobile fee categories into one fee category with a single fee code, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2011, we will continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category.

3. Interstate Telecommunications Service Providers (''ITSP'')

34. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159–W to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was performed in a consistent manner and eliminated processing issues that occurred in prior years. In FY 2011, we will continue rounding lines 14 and 16 when calculating the FY 2011 ITSP fee obligation. In addition, we will continue the practice of not mailing out Form 159–W via surface mail.

E. Payment of Regulatory Fees

1. Lock Box Bank

35. All lock box payments to the Commission for FY 2011 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the regulatory fee season, for those licensees paying by check, money order, or by credit card using Form 159–E remittance advice, the fee payment and Form 159–E remittance advice should be mailed to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197–9000. Additional payment options and instructions are posted at *http://www.fcc.gov/fees/regfees.html*.

2. Receiving Bank for Wire Payments

36. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their Fee Filer generated Form 159–E to U.S. Bank, St. Louis, Missouri at (314) 418–4232 at least one hour before initiating the wire transfer (but on the same business day), so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *http://www.fcc.gov/fees/wiretran.html*.

3. De Minimis Regulatory Fees

37. Regulatees whose total FY 2011 regulatory fee liability, including all categories of fees for which payment is due, is less than $10 are exempted from payment of FY 2011 regulatory fees.

4. Standard Fee Calculations and Payment Dates

38. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

• *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2010 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2010. In

[54] 47 U.S.C. 159(a) and 159(b).

[55] *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08–65, RM–11312, Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50201 (August 26, 2008) at paras. 38–41.

[56] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301 (2009) at paras. 7–13 (''*FY 2009 Report and Order*'').

[57] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, MD Docket No. 10–87, Report and Order, 25 FCC Rcd 9278 para. 31 (2010).

[58] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06–68, Report and Order, 21 FCC Rcd 8092, 8105, para. 48 (2006).

instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio bridging service providers are included in this category.[59]

• *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2010. The number of subscribers, units, or telephone numbers on December 31, 2010 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Table—FY 2011 Schedule of Regulatory Fees) pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2011.

• *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2010.[60] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services: Submarine Cable Systems:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2010. In instances where a license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2011 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

• *International Services: Terrestrial and Satellite Services:* Finally, regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2010 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for these purposes include backup and redundant circuits as of December 31, 2010. Whether circuits are used specifically for voice or data is not relevant for these purposes in determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2011 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

F. Enforcement

39. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees.[61] Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in § 1.1910 of the Commission's rules[62] and in the Debt Collection Improvement Act of 1996 (''DCIA'').[63] We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and § 1.1940(d) of the Commission's rules.[64] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

40. We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[65] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity

[59] Audio bridging services are toll teleconferencing services, and audio bridging service providers are required to contribute directly to the universal service fund based on revenues from these services. On June 30, 2008, the Commission released the *InterCall Order*, in which the Commission stated that InterCall, Inc. and all similarly situated audio bridging service providers are required to contribute directly to the universal service fund. *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96–45, Order, 23 FCC Rcd 10731 (2008) (''*InterCall Order*'').

[60] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, *etc.*) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2010, rather than on a count as of December 31, 2010.

[61] 47 U.S.C. 159(c).

[62] *See* 47 CFR 1.1910.

[63] Delinquent debt owed to the Commission triggers application of the ''red light rule'' which requires offsets or holds on pending disbursements. 47 CFR 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules,* MD Docket No. 02–339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR Part 1, Subpart O, Collection of Claims Owed the United States.

[64] 47 CFR 1.1940(d).

[65] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

responsible for paying the delinquent fee(s).

TABLE—REFERENCE TO FY 2010 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	25
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	45
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.33
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	310
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	310
AM Radio Construction Permits	390
FM Radio Construction Permits	675
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	81,550
Markets 11–25	63,275
Markets 26–50	42,550
Markets 51–100	23,750
Remaining Markets	6,125
Construction Permits	6,125
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	32,275
Markets 11–25	30,075
Markets 26–50	18,900
Markets 51–100	11,550
Remaining Markets	3,050
Construction Permits	3,050
Satellite Television Stations (All Markets)	1,300
Construction Permits—Satellite Television Stations	675
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	415
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	315
Cable Television Systems (per subscriber) (47 CFR part 76)	.89
Interstate Telecommunication Service Providers (per revenue dollar)	.00349
Earth Stations (47 CFR part 25)	240
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	127,925
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	138,050
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.39
International Bearer Circuits—Submarine Cable	([1])

[1]See Table Below.

FY 2010 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<= 25,000	$675	$550	$500	$575	$650	$825
25,001–75,000	1,350	1,075	750	875	1,325	1,450
75,001–150,000	2,025	1,350	1,000	1,450	1,825	2,725
150,001–500,000	3,050	2,300	1,500	1,725	2,800	3,550
500,001–1,200,000	4,400	3,500	2,500	2,875	4,450	5,225
1,200,001–3,000,000	6,750	5,400	3,750	4,600	7,250	8,350
> 3,000,000	8,100	6,475	4,750	5,750	9,250	10,850

INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE

Submarine cable systems (capacity as of December 31, 2009)	Fee amount	Address
< 2.5 Gbps	$14,625	FCC, International P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	29,250	FCC, International P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	58,500	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	116,975	FCC, International P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	233,950	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

FINAL REGULATORY FLEXIBILITY ANALYSIS

41. As required by the Regulatory Flexibility Act (''RFA''),[66] the Commission prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in its *Notice of Proposed Rulemaking.* Written public comments were sought on the FY 2011 fees proposal, including comments on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.[67]

I. Need for, and Objectives of, the Notice

42. This rulemaking proceeding was initiated for the Commission to amend its Schedule of Regulatory Fees in the amount of $335,794,000, which is the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

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

43. No parties have raised issues in response to the IRFA.

III. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

44. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[68] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[69] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[70] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[71]

45. Small Businesses. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[72]

46. Small Organizations. Nationwide, as of 2002, there are approximately 1.6 million small organizations.[73] A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[74]

47. Small Governmental Jurisdictions. 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.''[75] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[76] We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.''[77] Thus, we estimate that most governmental jurisdictions are small.

48. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.''[78] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[79] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

49. Incumbent Local Exchange Carriers (''ILECs''). 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

[66] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

[67] 5 U.S.C. 604.

[68] 5 U.S.C. 603(b)(3).

[69] 5 U.S.C. 601(6).

[70] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[71] 15 U.S.C. 632.

[72] *See* SBA, Office of Advocacy, ''Frequently Asked Questions, ''*http://web.sba.gov/faqs*'' (accessed Jan. 2009).

[73] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[74] 5 U.S.C. 601(4).

[75] 5 U.S.C. 601(5).

[76] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, p. 272, Table 415.

[77] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[78] 15 U.S.C. 632.

[79] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 15 U.S.C. 632(a) (''Small Business Act''); 5 U.S.C. 601(3) (''RFA''). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. See 13 CFR 121.102(b).

fewer employees.[80] According to Commission data,[81] 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

50. Competitive Local Exchange Carriers (''CLECs''), 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.[82] According to Commission data,[83] 1,005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are ''Other Local Service Providers.'' Of the 89, all have 1,500 or fewer 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 our action.

51. 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.[84] According to Commission data,[85] 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 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 our action.

52. 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.[86] According to Commission data,[87] 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 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.

53. Payphone Service Providers (''PSPs''). Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services 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.[88] According to Commission data,[89] 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

54. Interexchange Carriers (''IXCs''). 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.[90] According to Commission data,[91] 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

55. Operator Service Providers (''OSPs''). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[92] According to Commission data,[93] 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

56. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid 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.[94] According to Commission data,[95] 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

57. 800 and 800-Like Service Subscribers.[96] 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.[97] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[98] According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the

[80] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[81] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''*Trends in Telephone Service*'' at Table 5.3, Page 5–5 (Aug. 2008) (''*Trends in Telephone Service*''). This source uses data that are current as of November 1, 2006.

[82] 13 CFR 121.201, NAICS code 517110.

[83] ''Trends in Telephone Service'' at Table 5.3.

[84] 13 CFR 121.201, NAICS code 517310.

[85] ''Trends in Telephone Service'' at Table 5.3.

[86] 13 CFR 121.201, NAICS code 517310.

[87] ''Trends in Telephone Service'' at Table 5.3.

[88] 3 CFR 121.201, NAICS code 517110.

[89] ''Trends in Telephone Service'' at Table 5.3.

[90] 13 CFR 121.201, NAICS code 517110.

[91] ''Trends in Telephone Service'' at Table 5.3.

[92] 13 CFR 121.201, NAICS code 517110.

[93] ''Trends in Telephone Service'' at Table 5.3.

[94] 13 CFR 121.201, NAICS code 517310.

[95] ''Trends in Telephone Service'' at Table 5.3.

[96] We include all toll-free number subscribers in this category.

[97] 13 CFR 121.201, NAICS code 517310.

[98] ''Trends in Telephone Service'' at Tables 18.4, 18.5, 18.6, and 18.7.

number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer 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, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

58. Satellite Telecommunications and All Other Telecommunications. These 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.[99] The second has a size standard of $25 million or less in annual receipts.[100] The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.[101]

59. 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.'' [102] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[103] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[104] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

60. The second category of All Other Telecommunications comprises, *inter alia,* ''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.'' [105] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[106] Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[107] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

61. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[108] Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' [109] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[110] For the category of Wireless Telecommunications Carriers (except Satellite), preliminary data for 2007 show that there was 11,927 firms operating that year.[111] While the Census Bureau has not released data on the establishments broken down by number of employees, we note that the Census Bureau lists total employment for all firms in that sector at 281,262.[112] Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

62. Auctions. Initially, we note 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.

63. Common Carrier Paging. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' [113] Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[114] Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' [115] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[116] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[117] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or

[99] 13 CFR 121.201, NAICS code 517410.

[100] 13 CFR 121.201, NAICS code 517919.

[101] 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

[102] U.S. Census Bureau, 2007 NAICS Definitions, ''517410 Satellite Telecommunications''; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[103] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 517410 (issued Nov. 2005).

[104] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[105] U.S. Census Bureau, 2007 NAICS Definitions, ''517919 All Other Telecommunications''; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[106] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 517910 (issued Nov. 2005).

[107] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[108] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite)''; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[109] U.S. Census Bureau, 2002 NAICS Definitions, ''517211 Paging''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*; U.S. Census Bureau, 2002 NAICS Definitions, ''517212 Cellular and Other Wireless Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[110] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[111] U.S. Census Bureau, 2007 Economic Census, Sector 51, EC0751I1 Information: Industry Series: Preliminary Summary Statistics for the United States: 2007, NAICS code 517210 (issued Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?-fds_name=EC0700A1&-_clearIBQ=Y&-ds_name=EC0751I1&-NAICS2007=51721* (visited Mar. 2, 2011).

[112] *Id.*

[113] 13 CFR 121.201, NAICS code 517212.

[114] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite)''; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[115] U.S. Census Bureau, 2002 NAICS Definitions, ''517211 Paging''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM,*; U.S. Census Bureau, 2002 NAICS Definitions, ''517212 Cellular and Other Wireless Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[116] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[117] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211 (issued Nov. 2005).

more.[118] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[119] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[120] Thus, we estimate that the majority of wireless firms are small.

64. In addition, in the *Paging Second Report and Order,* the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits.[121] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[122] The SBA has approved this definition.[123] An initial auction of Metropolitan Economic Area (''MEA'') licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[124] Fifty-seven companies claiming small business status won 440 licenses.[125] A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[126] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[127]

65. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of ''paging and messaging'' services.[128] Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.[129] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

66. 2.3 GHz 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.[130] The SBA approved these definitions.[131] The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won licenses, and one bidder that qualified as a small business entity won a license.

67. 1670–1675 MHz Services. This service can be used for fixed and mobile uses, except aeronautical mobile.[132] An auction for one license in the 1670–1675 MHz band was conducted in 2003. The winning bidder was not a small entity.

68. 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).[133] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[134] According to *Trends in Telephone Service* data, 413 carriers reported that they were engaged in wireless telephony.[135] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[136] Therefore, more than half of these entities can be considered small.

69. Broadband Personal Communications Service. The broadband personal communications services (''PCS'') spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous years.[137] For Block F licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three years.[138] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[139] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C Block auctions.[140] A total of 93 bidders that claimed ''small'' and ''very small'' business status won licenses in the first auction of the D, E, and F Blocks.[141] In 1999, the Commission completed a subsequent auction of C, D, E, and F Block licenses.[142] Of the 57 winning bidders

[118] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[119] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212 (issued Nov. 2005).

[120] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[121] R*evision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 (''*Paging Second Report and Order*''); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[122] *Paging Second Report and Order,* 12 FCC Rcd at 2811, para. 179.

[123] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (''WTB''), FCC (Dec. 2, 1998) (''*Alvarez Letter 1998*'').

[124] *See* ''*929 and 931 MHz Paging Auction Closes,*'' Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[125] *See id.*

[126] *See* ''*Lower and Upper Paging Band Auction Closes,*'' Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[127] *See* ''*Lower and Upper Paging Bands Auction Closes,*'' Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[128] ''Trends in Telephone Service'' at Table 5.3.

[129] *Id.*

[130] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS),* Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[131] *See Alvarez Letter* 1998.

[132] 47 CFR 2.106; *see generally* 47 CFR 27.1–.70.

[133] 13 CFR 121.201, NAICS code 517210.

[134] *Id.*

[135] ''Trends in Telephone Service'' at Table 5.3.

[136] *Id.*

[137] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap *et al.*, *Report and Order,* 11 FCC Rcd 7824, 7850–52, paras. 57–60 (1996) (''*PCS Report and Order*''); *see also* 47 CFR 24.720(b).

[138] *See PCS Report and Order,* 11 FCC Rcd at 7852, para. 60.

[139] *See Alvarez Letter* 1998.

[140] *See* Entrepreneurs C Block Auction Closes, *Public Notice,* DA 96–716 (1996); Entrepreneurs C Block Reauction Closes, *Public Notice,* DA 96–1153 (1996).

[141] *See* Broadband PCS, D, E and F Block Auction Closes, *Public Notice,* Doc. No. 89838 (released January 14, 1997).

[142] *See* C, D, E, and F Block Broadband PCS Auction Closes, *Public Notice,* 14 FCC Rcd 6688 (1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97–82, *Fourth Report and Order,* 13 FCC Rcd 15,743, 15,768 para. 46 (1998).

in that auction, 48 claimed small business status and won 277 licenses.[143]

70. In 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses (Auction 35). Of the 35 winning bidders in that auction, 29 claimed small or very small businesses status.[144] Subsequent events concerning that Auction, including judicial and agency determinations, resulted in only a portion of those C and F Block licenses being available for grant. The Commission completed an auction of 188 C Block licenses and 21 F Block licenses in 2005. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.[145] In 2007, the Commission completed an auction of licenses in the A, C, and F Blocks.[146] Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.[147] Most recently, in 2008, the Commission completed the auction of C, D, E, and F Block Broadband PCS licenses.[148] Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.[149]

71. Advanced Wireless Services. In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''), designated as Auction 66.[150] For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million.[151] In Auction 66, 31 winning bidders identified themselves as very small businesses and won 142 licenses.[152] Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.[153] In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses.[154] Four winning bidders identifying themselves as very small businesses won 17 licenses, and three winning bidders identifying themselves as a small business won five AWS–1 licenses.[155]

72. Narrowband Personal Communications Services. In 1994, the Commission conducted two auctions of Narrowband PCS licenses. For these auctions, the Commission defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million.[156] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[157] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.*[158] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[159] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[160] The SBA has approved these small business size standards.[161] A third auction of Narrowband PCS licenses was conducted in 2001. In that auction, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[162] Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

73. Lower 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[163] The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[164] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[165] Additionally, the Lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[166] The SBA approved these small size standards.[167] An auction of 740 licenses was conducted in 2002 (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of

[143] *See* C, D, E, and F Block Broadband PCS Auction Closes, *Public Notice,* 14 FCC Rcd 6688 (1999).

[144] *See* ''C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 2339 (2001).

[145] *See* ''Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,'' *Public Notice,* 20 FCC Rcd 3703 (2005).

[146] *See* ''Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,'' *Public Notice,* 22 FCC Rcd 9247 (2007).

[147] *Id.*

[148] *See* Auction of AWS–1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78, *Public Notice,* 23 FCC Rcd 12,749 (2008).

[149] *Id.*

[150] *See* Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, AU Docket No. 06–30, *Public Notice,* 21 FCC Rcd 4562 (2006) (''*Auction 66 Procedures Public Notice*'').

[151] *See* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order,* 18 FCC Rcd 25,162, App. B (2003), *modified by* Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration,* 20 FCC Rcd 14,058, App. C (2005).

[152] *See* Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66, *Public Notice,* 21 FCC Rcd 10,521 (2006) (''*Auction 66 Closing Public Notice*'').

[153] *See id.*

[154] *See AWS–1 and Broadband PCS Procedures Public Notice,* 23 FCC Rcd at 7499. Auction 78 also included an auction of broadband PCS licenses.

[155] *See* ''Auction of AWS–1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period'', *Public Notice,* 23 FCC Rcd 12749–65 (2008).

[156] *Implementation of Section 309(j) of the Communications Act - Competitive Bidding Narrowband PCS,* Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[157] *See* ''Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674,'' *Public Notice,* PNWL 94–004 (rel. Aug. 2, 1994); ''Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787,'' *Public Notice,* PNWL 94–27 (released November 9, 1994).

[158] *Amendment of the Commission's Rules to Establish New Personal Communications Services,* Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (''*Narrowband PCS Second Report and Order*'').

[159] *Narrowband PCS Second Report and Order,* 15 FCC Rcd at 10476, para. 40.

[160] *Id.*

[161] *See Alvarez Letter 1998.*

[162] *See* ''Narrowband PCS Auction Closes,'' *Public Notice,* 16 FCC Rcd 18663 (WTB 2001).

[163] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59),* Report and Order, 17 FCC Rcd 1022 (2002) (''*Channels 52–59 Report and Order*'').

[164] *See Channels 52–59 Report and Order,* 17 FCC Rcd at 1087–88, para. 172.

[165] *See id.*

[166] *See id,* 17 FCC Rcd at 1088, para. 173.

[167] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (''*Alvarez Letter 1999*'').

329 licenses.[168] A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses.[169] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[170] In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). All three winning bidders claimed small business status.

74. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.*[171] An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.[172] Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

75. Upper 700 MHz Band Licenses. In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses.[173] In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.[174] Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

76. 700 MHz Guard Band Licenses. In 2000, the Commission adopted the *700 MHz Guard Band Report and Order,* in which it established rules for the A and B block licenses in the Upper 700 MHz band, including size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits.[175] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[176] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[177] SBA approval of these definitions is not required.[178] An auction of these licenses was conducted in 2000.[179] Of the 104 licenses auctioned, 96 licenses were won by nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses was held in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business.[180]

77. Specialized Mobile Radio. The Commission adopted small business size standards for the purpose of determining eligibility for bidding credits in auctions of Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[181] The Commission defined a ''very small business'' as an entity that together with its affiliates and controlling principals, has average gross revenues not exceeding $3 million for the preceding three years.[182] The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service.[183] The first 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 licenses in the 900 MHz SMR band. In 2004, the Commission held a second auction of 900 MHz SMR licenses and three winning bidders identifying themselves as very small businesses won 7 licenses.[184] The auction of 800 MHz SMR licenses for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small or very small businesses under the $15 million size standard won 38 licenses for the upper 200 channels.[185] A second auction of 800 MHz SMR licenses was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[186]

78. The auction of the 1,053 800 MHz SMR licenses for the General Category channels was conducted in 2000. Eleven bidders who won 108 licenses for the General Category channels in the 800 MHz SMR band qualified as small or very small businesses .[187] In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[188] Of the 22 winning bidders, 19 claimed small or very small business status and won 129 licenses. Thus, combining all three auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed to be small businesses.

79. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz

[168] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[169] *See* Lower 700 MHz Band Auction Closes, *Public Notice,* 18 FCC Rcd 11,873 (WTB 2003).

[170] *See id.*

[171] Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94–102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone,* WT Docket No. 01–309, *Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services,* WT Docket No. 03–264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules,* WT Docket No. 06–169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band,* PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010,* WT Docket No. 96–86, Second Report and Order, 22 FCC Rcd 15289 (2007) (''*700 MHz Second Report and Order*'').

[172] *See* Auction of 700 MHz Band Licenses Closes, *Public Notice,* 23 FCC Rcd 4572 (WTB 2008).

[173] 700 MHz Second Report and Order, 22 FCC Rcd 15,289.

[174] *See* Auction of 700 MHz Band Licenses Closes, *Public Notice,* 23 FCC Rcd 4572 (2008).

[175] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299 (2000) (''700 MHz Guard Band Report and Order'').

[176] *See 700 MHz Guard Band Report and Order,* 15 FCC Rcd at 5343, para. 108.

[177] *See id.*

[178] *See id.,* 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[179] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 18026 (2000).

[180] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[181] 47 CFR 90.810, 90.814(b), 90.912.

[182] 47 CFR 90.810, 90.814(b), 90.912.

[183] *See Alvarez Letter 1999.*

[184] *See* 900 MHz Specialized Mobile Radio Service Spectrum Auction Closes: Winning Bidders Announced,'' *Public Notice,* 19 FCC Rcd. 3921 (WTB 2004).

[185] *See* ''Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,''' *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[186] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[187] *See* ''800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 17162 (2000).

[188] *See,* ''800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 1736 (2000).

or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues not exceeding $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.[189] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

80. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite).[190] This category provides that a small business is a wireless company employing no more than 1,500 persons.[191] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

81. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service licenses are assigned by auction, where mutually exclusive applications are accepted. In the *220 MHz Third Report and Order,* the Commission adopted small business size standards for defining ''small'' and ''very small'' businesses for the purpose of determining their eligibility for special provisions such as bidding credits, which are discounts on winning bids [192] that the Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[193] The Commission defined a ''very small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[194] The SBA has approved these small size standards.[195] The first auction of Phase II licenses was conducted in 1998.[196] In that auction, 908 licenses were offered in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (''EAG'') Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[197] Thirty-nine small or very small businesses won 373 licenses in the first 220 MHz auction. A second auction in 1999 offered 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming very small business status won 158 licenses.[198] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[199] In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.[200] Auction 72 offered 94 Phase II 220 MHz Service licenses.[201] In this auction, five winning bidders won a total of 76 licenses.[202] Two winning bidders that identified themselves as very small businesses won 56 of the 76 licenses. One winning bidder that identified itself as a small business won 5 licenses.

82. Private Land Mobile Radio (''PLMR''). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[203] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[204]

83. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

84. Fixed Microwave Services. Fixed microwave services include common carrier,[205] private operational-fixed,[206] and broadcast auxiliary radio services.[207] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed

[189] *See generally* 13 CFR 121.201, NAICS code 517210.

[190] *Id.*

[191] *Id.*

[192] *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service,* Third Report and Order, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[193] *Id.* at 11068, para. 291.

[194] *Id.*

[195] *See* Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) (''*Alvarez to Phythyon Letter 1998*'').

[196] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice,* 14 FCC Rcd 605 (1998).

[197] *See* ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' *Public Notice,* 14 FCC Rcd 1085 (1999).

[198] *See* ''Phase II 220 MHz Service Spectrum Auction Closes,'' *Public Notice,* 14 FCC Rcd 11218 (1999).

[199] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (2002).

[200] *See* ''Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72, *Public Notice,* 22 FCC Rcd 3404 (2007).

[201] *Id.*

[202] *See* ''Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period, *Public Notice,* 22 FCC Rcd 11573 (2007).

[203] *See* 13 CFR 121.201, NAICS code 517210.

[204] *See generally* 13 CFR 121.201.

[205] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

[206] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[207] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[208] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

85. 39 GHz Service. The Commission adopted small business size standards for 39 GHz licenses. A ''small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million in the preceding three years.[209] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues of not more than $15 million for the preceding three years.[210] The SBA has approved these small business size standards.[211] In 2000, the Commission conducted an auction of 2,173, 39 GHz licenses. A total of 18 bidders who claimed small or very small business status won 849 licenses.

86. Local Multipoint Distribution Service. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[212] The Commission established small business size standards for LMDS licenses. It defined a ''small business'' as an entity that has average gross revenues of not more than $40 million in the three preceding years and defined a ''very small business'' as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the three preceding years.[213] The SBA approved these small business size standards for auctions of LMDS licenses.[214] In 1998, an auction of 986 LMDS licenses was conducted. A total of 93 winning bidders that qualified as small or very small businesses won approximately 664 licenses. In 1999, the Commission conducted an auction of 161 LMDS licenses. and in this auction, 32 small and very small businesses won 119 licenses.

87. 218–219 MHz Service. The first auction of 218–219 MHz Service (previously referred to as the Interactive and Video Data Service or IVDS) licenses resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (''MSAs'').[215] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after Federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[216] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission revised its small business size standards for the 218–219 MHz Service and defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[217] The Commission defined a very small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[218] The SBA has approved these definitions.[219]

88. Location and Monitoring Service (''LMS''). Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For auctions of LMS licenses, the Commission has defined a ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[220] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[221] These definitions have been approved by the SBA.[222] An auction of LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

89. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[223] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS'').[224] In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[225] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by our action.

90. Air-Ground Radiotelephone Service.[226] The Commission has previously used the SBA's small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500

[208] 13 CFR 121.201, NAICS code 517210.

[209] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands,* ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

[210] *Id.*

[211] *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); *see* Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (January 18, 2002).

[212] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997) (''*LMDS Second Report and Order*'').

[213] *See LMDS Second Report and Order,* 12 FCC Rcd at 12689–90, para. 348.

[214] *See Alvarez to Phythyon Letter 1998.*

[215] *See ''Interactive Video and Data Service (IVDS) Applications Accepted for Filing,''* Public Notice, 9 FCC Rcd 6227 (1994).

[216] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[217] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[218] *Id.*

[219] *See Alvarez to Phythyon Letter 1998.*

[220] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd 15182, 15192, para. 20 (1998) (''*Automatic Vehicle Monitoring Systems Second Report and Order*''); *see also* 47 CFR 90.1103.

[221] *Automatic Vehicle Monitoring Systems Second Report and Order,* 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[222] *See Alvarez Letter 1998.*

[223] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[224] BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[225] 13 CFR 121.201, NAICS code 517210.

[226] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

persons.[227] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[228] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[229] These definitions were approved by the SBA.[230] In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). The auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

91. Aviation and Marine Radio Services. There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[231] The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[232] We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.[233] In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For VHF Public Coast licenses, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not exceeding $15 million dollars. In addition, it defined a ''very small'' business as one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not exceeding $3 million dollars.[234] The Commission also made available Automated Maritime Telecommunications System (''AMTS'') licenses in Auctions 57 and 61.[235] Winning bidders could claim status as a very small business or a very small business. For AMTS, the Commission defined a very small business as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years, and defined a small business as an entity with attributed average annual gross revenues not exceeding $15 million for the preceding three years.[236] Three of the winning bidders in Auction 57 qualified as small or very small businesses, and three winning bidders in Auction 61 qualified as very small businesses.

92. Offshore Radiotelephone Service. This service operates on several ultra high frequencies (''UHF'') television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[237] There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services.[238] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[239]

93. Multiple Address Systems (''MAS''). Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. The Commission defines a small business for MAS licenses as an entity that has average gross revenues of less than $15 million in the preceding three calendar years.[240] A very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[241] The SBA has approved these definitions.[242] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In 2001, an auction of 5,104 MAS licenses in 176 EAs was conducted in 2001.[243] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

94. With respect to entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size

[227] 13 CFR 121.201, NAICS codes 517210.

[228] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service,* WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28–42 (2005).

[229] *Id.*

[230] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

[231] Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. *See* Amendment of Parts 80 and 87 of the Commission's rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order,* WT Docket No. 96–82, 11 FCC Rcd 14849 (1996).

[232] 13 CFR 121.201, NAICS code 517210.

[233] A licensee may have a license in more than one category.

[234] *Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[235] *See ''Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,''* Public Notice, 19 FCC Rcd 9518 (WTB 2004); *''Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61,''* Public Notice, 20 FCC Rcd 7811 (WTB 2005).

[236] 47 CFR 80.1252.

[237] This service is governed by Subpart I of Part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[238] 13 CFR 121.201, NAICS code 517210.

[239] *Id.*

[240] *See Amendment of the Commission's Rules Regarding Multiple Address Systems,* Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[241] *Id.*

[242] *See Alvarez Letter 1999.*

[243] *See ''Multiple Address Systems Spectrum Auction Closes,''* Public Notice, 16 FCC Rcd 21011 (2001).

standard in this instance appears to be that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[244]The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

95. 1.4 GHz Band Licensees. The Commission conducted an auction of 64 1.4 GHz band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands, and in the unpaired 1390–1392 MHz band in 2007.[245] For these licenses, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, had average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[246] Neither of the two winning bidders claimed small business status.[247]

96. Incumbent 24 GHz Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons.[248] The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent [249] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity.

97. Future 24 GHz Licensees. With respect to new applicants for licenses in the 24 GHz band, for the purpose of determining eligibility for bidding credits, the Commission established three small business definitions. An ''entrrpreneur'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $40 million.[250] A ''small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[251] A ''very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[252] The SBA has approved these definitions.[253] In a 2004 auction of 24 GHz licenses, three winning bidders won seven licenses. Two of the winning bidders were very small businesses that won five licenses.

98. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')).[254] In connection with the 1996 BRS auction, the Commission established a size standard that defined a ''small business'' as an entity that had annual average gross revenues of no more than $40 million in the preceding three years.[255] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 winning bidders, 61 met the definition of a small business. At this time, we estimate that of the 61 small businesses that won BRS licenses in the 1996 auction, 48 remain small business licensees. BRS also includes licensees of stations authorized prior to the 1996 auction. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[256] In 2008, the Commission adopted three small business definitions for BRS, for the purpose of determining eligibility for bidding credits. A ''small business'' is defined as an entity with attributed average annual gross revenues that do not exceed $40 million for the preceding three years. A ''very small business'' is defined as an entity with attributed average annual gross revenues that do not exceed $15 million for the preceding three years. An ''entrepreneur'' is defined as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years.[257] In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.[258] Auction 86 concluded with the sale of 61 licenses.[259] Of the ten winning bidders, three bidders that claimed small business status won 7 licenses, and two bidders that claimed entrepreneur status won six licenses. After adding the number of small businesses that won licenses in the Commission's BRS auctions to the approximately 392 incumbent BRS licensees who are considered small entities, we estimate that there are currently approximately 445 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

99. In addition, the SBA's Cable Television Distribution Services small

[244] *See* 13 CFR 121.201, NAICS code 517210.

[245] *See ''Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,''* Public Notice, 21 FCC Rcd 12393 (WTB 2006); *''Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,''* Public Notice, 22 FCC Rcd 4714 (2007) (*''Auction No. 69 Closing PN''*).

[246] *Auction No. 69 Closing PN,* Attachment C.

[247] *See Auction No. 69 Closing PN.*

[248] 13 CFR 121.201, NAICS code 517210.

[249] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[250] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967 para. 77 (2000) (*''24 GHz Report and Order''*); *see also* 47 CFR 101.538(a)(3).

[251] *24 GHz Report and Order,* 15 FCC Rcd at 16967 para. 77; *see also* 47 CFR 101.538(a)(2).

[252] *24 GHz Report and Order,* 15 FCC Rcd at 16967 para. 77; *see also* 47 CFR 101.538(a)(1).

[253] *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

[254] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995) (*''MDS Auction R&O''*).

[255] 47 CFR 21.961(b)(1).

[256] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

[257] *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* WT Docket No. 03–66, Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 5992, 6007 para. 28 (2008) (*''BRS/EBS 4th MO&O & 2nd FNPRM''*).

[258] Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *Public Notice,* 24 FCC Rcd 8277 (2009).

[259] Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice,* 24 FCC Rcd 13572 (2009).

business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[260] Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [261] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[262] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[263] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[264] Thus, the majority of these firms can be considered small.

100. Television Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' [265] The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts.[266] The Commission has estimated the number of licensed commercial television stations to be 1,392.[267] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,395 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[268] We therefore estimate that the majority of commercial television broadcasters are small entities.

101. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [269] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

102. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391.[270] These stations are non-profit, and therefore considered to be small entities.[271]

103. In addition, there are also 2,387 low power television stations (LPTV).[272] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

104. Radio Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' [273] The SBA has established a small business size standard for this category, which is: such firms having $7 million or less in annual receipts.[274] According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

105. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[275] In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation.[276] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

106. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules

[260] The term ''small entity'' within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

[261] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[262] 13 CFR 121.201, NAICS code 517110.

[263] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[264] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[265] U.S. Census Bureau, 2007 NAICS Definitions, ''515120 Television Broadcasting'' (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[266] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

[267] *See FCC News Release,* ''Broadcast Station Totals as of September 30, 2010,'' dated October 22, 2010; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[268] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[269] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

[270] *See FCC News Release,* ''Broadcast Station Totals as of September 30, 2010,'' dated October 22, 2010; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[271] *See generally* 5 U.S.C. 601(4), (6).

[272] *See FCC News Release,* ''Broadcast Station Totals as of September 30, 2010,'' dated October 22, 2010; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC–280836A1.pdf.*

[273] U.S. Census Bureau, 2007 NAICS Definitions, ''515112 Radio Stations''; *http://www.census.gov/naics/2007/def/ND515112.HTM#N515112.*

[274] 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2008).

[275] ''Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.'' 13 CFR 121.103(a)(1) (an SBA regulation).

[276] 13 CFR 121.102(b) (an SBA regulation).

applicable to radio broadcasting stations and television broadcasting stations.[277]

107. The Commission estimates that there are approximately 5,618 FM translators and boosters.[278] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($7.0 million for a radio station or $14.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated. [279]

108. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [280] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[281] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[282] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[283] Thus, the majority of these firms can be considered small.

109. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[284] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[285] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[286] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[287] Thus, under this second size standard, most cable systems are small.

110. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [288] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[289] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[290] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[291] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

111. Open Video Systems. The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[292] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[293] OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' [294] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[295] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire

[277] 13 CFR 121.201, NAICS codes 515112 and 515120.

[278] *See supra* note 294.

[279] *See* 15 U.S.C. 632.

[280] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[281] 13 CFR 121.201, NAICS code 517110.

[282] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[283] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[284] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[285] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[286] 47 CFR 76.901(c).

[287] Warren Communications News, *Television & Cable Factbook 2008,* ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[288] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[289] 47 CFR 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[290] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[291] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[292] 47 U.S.C. 571(a)(3)–(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report,* 24 FCC Rcd 542, 606 para. 135 (2009) (''*Thirteenth Annual Cable Competition Report*'').

[293] *See* 47 U.S.C. 573.

[294] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers''; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[295] 13 CFR 121.201, NAICS code 517110.

year.[296] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[297] Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[298] Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises.[299] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

112. Cable Television Relay Service. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [300] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[301] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[302] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[303] Thus, the majority of these firms can be considered small.

113. Multichannel Video Distribution and Data Service. MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defines a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[304] These definitions were approved by the SBA.[305] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[306] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[307]

114. Amateur Radio Service. These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

115. Aviation and Marine Services. Small businesses in the aviation and marine radio services use a very high frequency (''VHF'') marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[308] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For VHF Public Coast licenses, the Commission defines a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is defined as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[309] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

116. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[310] These services include Citizen Band Radio Service (''CB''), General Mobile Radio

[296] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[297] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[298] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[299] *See Thirteenth Annual Cable Competition Report,* 24 FCC Rcd at 606–07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[300] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[301] 13 CFR 121.201, NAICS code 517110.

[302] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[303] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[304] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band,* ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

[305] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb.13, 2002).

[306] *See ''Multichannel Video Distribution and Data Service Auction Closes,''* Public Notice, 19 FCC Rcd 1834 (2004).

[307] *See ''Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63,''* Public Notice, 20 FCC Rcd 19807 (2005).

[308] 13 CFR 121.201, NAICS code 517210.

[309] *Amendment of the Commission's Rules Concerning Maritime Communications,* Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[310] 47 CFR part 90.

Service (''GMRS''), Radio Control Radio Service (''R/C''), Family Radio Service (''FRS''), Wireless Medical Telemetry Service (''WMTS''), Medical Implant Communications Service (''MICS''), Low Power Radio Service (''LPRS''), and Multi-Use Radio Service (''MURS'').[311] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.[312] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by our action.

117. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[313] There are a total of approximately 127,540 licensees in these services. Governmental entities [314] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[315]

118. Internet Service Providers. 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 connections (*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,[316] which has an SBA small business size standard of 1,500 or fewer employees.[317] The latter are within the category of All Other Telecommunications,[318] which has a size standard of annual receipts of $25 million or less.[319] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[320] 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.[321] 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.[322] Consequently, we estimate that the majority of ISP firms are small entities.

119. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this (IRFA/FRFA) describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

120. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA/FRFA.

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

121. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, and pay a regulatory fee based on the number of licenses or call signs.[323] In some instances, licensees may decide to submit an FCC Form 159 Remittance Advice. Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply

[311] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR part 95.

[312] 13 CFR 121.201, NAICS Code 517210.

[313] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (''EMRS'') use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[314] 47 CFR 1.1162.

[315] 5 U.S.C. 601(5).

[316] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'', *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[317] 13 CFR 121.201, NAICS code 517110 (updated for inflation in 2008).

[318] U.S. Census Bureau, 2007 NAICS Definitions, ''517919 All Other Telecommunications''; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[319] 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

[320] U.S. Census Bureau, 2002 NAICS Definitions, ''518111 Internet Service Providers''; *http://www.census.gov/eped/naics02/def/NDEF518.HTM.*

[321] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 518111 (issued Nov. 2005).

[322] An additional 45 firms had receipts of $25 million or more.

[323] See 47 CFR 1.1162 for the general exemptions from regulatory fees. *e.g.,* Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to submit a regulatory fee payment, and it can be completed by the employees responsible for an entity's business records.

122. As discussed previously in this *Notice of Proposed Rulemaking,* the Commission concluded in its FY 2009 regulatory fee cycle that licensees filing their annual regulatory fee payments must begin the process by entering the Commission's Fee Filer system with a valid FRN and password. In some instances, it will be necessary to use a specific FRN and password that is linked to a particular regulatory fee bill. Going forward, the submission of hardcopy Form 159 documents will not be permitted for making a regulatory fee payment during the regulatory fee cycle. By requiring licensees to use Fee Filer to begin the regulatory fee payment process, errors resulting from illegible handwriting on hardcopy Form 159's will be reduced, and the Commission will be able to create an electronic record of licensee payment attributes that are more easily traceable than payments that were previously mailed in with a hardcopy Form 159.

123. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[324] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[325] Further, in accordance with the DCIA, Federal agencies may bar a person or entity from obtaining a Federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any Federal agency.[326] Nonpayment of regulatory fees is a debt owed to the United States pursuant to 31 U.S.C. 3711 *et seq.,* and the DCIA. Appropriate enforcement measures, as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a Federal loan or loan guarantee pending before another Federal agency until such obligations are paid.[327]

124. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[328] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (*e.g.,* where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

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

125. 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.[329] In our *NPRM,* we sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding. We received no comments specifically in response to the IRFA.

126. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances. We note that small entities should be assisted by our implementation of the Fee Filer program, and that we have continued our practice of exempting fees whose total sum owed is less than $10.00.

VI. Report to Congress

127. The Commission will send a copy of this *Report and Order,* including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[330] In addition, the Commission will send a copy of this *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register.**[331]

VII. Ordering Clauses

128. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 CFR 1.1166(b) be *amended to read,* ''Deferrals of fees, if granted, will be for a designated period of time not to exceed six months.''

129. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 CFR 1.1164(c) be *amended to read,* ''If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.''

130. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Report and Order *is hereby adopted.*

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

[324] 47 CFR 1.1164.

[325] 47 CFR 1.1164(c).

[326] Public Law 104–134, 110 Stat. 1321 (1996).

[327] 31 U.S.C. 7701(c)(2)(B).

[328] 47 CFR 1.1166.

[329] 5 U.S.C. 603.

[330] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the CWAAA; *see* Public Law 104–121, Title II, 251, 110 Stat. 868.

[331] *See* 5 U.S.C. 604(b).

PART 1—PRACTICE AND PROCEDURE

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

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

■ 2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90)		
(a) New, Renew/Mod (FCC 601 & 159)	$40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
220 MHz Nationwide		
(a) New, Renew/Mod (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
2. Microwave (47 CFR Pt. 101) (Private)		
(a) New, Renew/Mod (FCC 601 & 159)	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
3. 218–219 MHz Service		
(a) New, Renew/Mod (FCC 601 & 159)	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
4. Shared Use Services— Land Mobile (Frequencies Below 470 MHz—except 220 MHz)		
(a) New, Renew/Mod (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
General Mobile Radio Service		
(a) New, Renew/Mod (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Rural Radio (Part 22)		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Marine Coast		
(a) New Renewal/Mod (FCC 601 & 159)	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.

Exclusive use services (per license)	Fee amount [1]	Address
(c) Renewal Only (FCC 601 & 159)	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Aviation Ground		
(a) New, Renewal/Mod (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Only) (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Marine Ship		
(a) New, Renewal/Mod (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Aviation Aircraft		
(a) New, Renew/Mod (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
5. Amateur Vanity Call Signs		
(a) Initial or Renew (FCC 605 & 159)	1.42	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	1.42	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
6. CMRS Cellular/Mobile Services (per unit)		
(FCC 159)	[2].17	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.
7. CMRS Messaging Services (Per unit)		
(FCC 159)	[3].08	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.
8. Broadband Radio Service (formerly MMDS and MDS)	310	FCC, , P.O. Box 979084, St. Louis, MO 63197–9000.
9. Local Multipoint Distribution Service	310	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.

[1] Note that ''small fees'' are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in section 1.1102 of this chapter.
[2] These are standard fees that are to be paid in accordance with 1.1157(b) of this chapter.
[3] These are standard fees that are to be paid in accordance with 1.1157(b) of this chapter.

■ 3. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Radio [AM and FM] (47 CFR, Part 73)	Fee amount	Address
1. AM Class A:		
<= 25,000 population	$700	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,400	
75,001–150,000 population	2,100	
150,001–500,000 population	3,150	
500,001–1,200,000 population	4,550	
1,200,001–3,000,000 population	7,000	
> 3,000,000 population	8,400	
2. AM Class B:		
<= 25,000 population	575	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,150	
75,001–150,000 population	1,450	
150,001–500,000 population	2,450	

Radio [AM and FM] (47 CFR, Part 73)	Fee amount	Address
500,001–1,200,000 population	3,750	
1,200,001–3,000,000 population	5,750	
> 3,000,000 population	6,900	
3. AM Class C:		
<= 25,000 population	525	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	800	
75,001–150,000 population	1,050	
150,001–500,000 population	1,575	
500,001–1,200,000 population	2,625	
1,200,001–3,000,000 population	3,950	
> 3,000,000 population	5,000	
4. AM Class D:		
<= 25,000 population	600	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	900	
75,001–150,000 population	1,500	
150,001–500,000 population	1,800	
500,001–1,200,000 population	3,000	
1,200,001–3,000,000 population	4,800	
> 3,000,000 population	6,000	
5. AM Construction Permit	490	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
6. FM Classes A, B1 and C3:		
<= 25,000 population	675	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,350	
75,001–150,000 population	1,850	
150,001–500,000 population	2,875	
500,001–1,200,000 population	4,550	
1,200,001–3,000,000 population	7,425	
> 3,000,000 population	9,450	
7. FM Classes B, C, C0, C1 and C2:		
<= 25,000 population	850	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,500	
75,001–150,000 population	2,750	
150,001–500,000 population	3,600	
500,001–1,200,000 population	5,300	
1,200,001–3,000,000 population	8,500	
> 3,000,000 population	11,050	
8. FM Construction Permits	675	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
TV (47 CFR, Part 73) VHF Commercial:		
1. Markets 1 thru 10	84,625	FCC, TV Branch, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Markets 11 thru 25	68,175	
3. Markets 26 thru 50	40,475	
4. Markets 51 thru 100	22,750	
5. Remaining Markets	6,100	
6. Construction Permits	6,100	
UHF Commercial:		
1. Markets 1 thru 10	34,650	FCC, UHF Commercial, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Markets 11 thru 25	32,950	
3. Markets 26 thru 50	20,950	
4. Markets 51 thru 100	12,325	
5. Remaining Markets	3,275	
6. Construction Permits	3,275	
Satellite UHF/VHF Commercial:		
1. All Markets	1,250	FCC Satellite TV, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Construction Permits	670	
Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74)	395	FCC, Low Power, P.O. Box 979084, St. Louis, MO 63197–9000.
Broadcast Auxiliary	10	FCC, Auxiliary, P.O. Box 979084, St. Louis, MO 63197–9000.

■ 4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio Facilities:		
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159)	$25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Carriers:		

	Fee amount	Address
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A).	.00375	FCC, Carriers, P.O. Box 979084, St. Louis, MO 63197–9000.

■ 5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Television Relay Service	$370	FCC, Cable, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Cable TV System (per subscriber)	.93	

■ 6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

(a) The following schedule applies for the listed services:

Fee category	Fee amount	Address
Space Stations (Geostationary Orbit)	$131,375	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
Space Stations (Non-Geostationary Orbit)	141,750	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	245	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

(b)(1) *International Terrestrial and Satellite*. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for these purposes include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

(2) The fee amount, per active 64 KB circuit or equivalent will be determined for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

International terrestrial and satellite (capacity as of December 31, 2010)	Fee amount	Address
Terrestrial Common Carrier Satellite Common Carrier Satellite Non-Common Carrier	$0.35 per 64 KB Circuit	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

(c) *Submarine cable:* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Submarine cable systems (capacity as of Dec. 31, 2010)	Fee amount	Address
< 2.5 Gbps	$12,825	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	25,650	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	51,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	102,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	205,225	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

■ 7. In § 1.1164, paragraph (c) is revised to read as follows:

§ 1.1164. Penalties for late or insufficient regulatory fee payments.

* * * * *

(c) If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

* * * * *

■ 8. In § 1.1166, paragraph (b) is revised to read as follows:

§ 1.1166. Waivers, reductions and deferrals of regulatory fees.

* * * * *

(b) Deferrals of fees, if granted, will be for a designated period of time not to exceed six months.

* * * * *

[FR Doc. 2011–19836 Filed 8–9–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 25

[ET Docket No. 10–142; Report 2932]

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

AGENCY: Federal Communication Commission.

ACTION: Final rule; petition for reconsideration

SUMMARY: In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's rulemaking proceeding concerning Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz and published pursuant to 47 CFR 1.429(e). See 1.4(b)(1) of the Commission's rules, 47 CFR 1.4(b)(1).

DATES: Oppositions to the Petitions must be filed by August 25, 2011. Replies to an opposition must be filed by September 6, 2011.

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

FOR FURTHER INFORMATION CONTACT: Kevin Holmes, Wireless Telecommunications Bureau, 202–418–0564.

SUPPLEMENTARY INFORMATION: On April 6, 2011, the Commission, via the Office of Engineering and Technology Bureau released *In the Matter of Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz,* FCC 11–57, *Report and Order*, adopted April 5, 2011, published at 76 FR 31252, May 31, 2011. This is a summary of the Commission's document, Report No. 2932, released July 29, 2011. The full text of document Report No. 2932 is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of document Report No. 2932 pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because it does not have an impact on any rules of particular applicability.

Subject: In the Matter of Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz (ET Docket No. 10–142).

Number of Petitions Filed: 3.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–20313 Filed 8–9–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 10–118; RM–11603; RM–11631; DA 11–1209]

Radio Broadcasting Services; Gearhart, Madras, and Manzanita, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Black Hills Broadcasting, L.C., as modified pursuant to the counterproposal of Cumulus Licensing LLC (''Cumulus''), allots FM Channel 227A at Gearhart, Oregon. Channel 227A can be allotted at Gearhart, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 45–57–11 NL and 123–56–14 WL. In addition, the Audio Division substitutes Channel 248C3 for vacant Channel 228C3 at Manzanita, Oregon, and substitutes Channel *243C1 for vacant but applied for Channel *251C1 at Madras, Oregon. The reference coordinates for Channel 248C3 at Manzanita, Oregon, are 45–41–05 NL and 123–54–38 WL, and the reference coordinates for Channel *243C1 at Madras Oregon, are 44–50–02 NL and 120–45–55 WL. In addition, the Audio Division granted the application of Cumulus (File No. BMPH–20100805AKO) for a channel upgrade and change of community of interest for Station KNRQ–FM, from Channel 250C2 at Tualatin, Oregon, to Channel 250C1 at Aloha, Oregon. Finally, as proposed by Cumulus in its application, the Audio Division required Station KCYS(FM), Seaside, Oregon, to change from Channel 251A to Channel 243A. *See* Supplementary Information *infra.*

DATES: Effective September 9, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew Rhodes or Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 10–118, adopted July 18, 2011, and released July 19, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Gearhart, Channel 227A, by removing Channel *251C1 at Madras, by adding Channel *243C1 at Madras, and by adding Manzanita, Channel 248C3.

[FR Doc. 2011–20340 Filed 8–9–11; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards: Elimination of the Exemption From Cost Accounting Standards for Contracts and Subcontracts Executed and Performed Entirely Outside the United States, Its Territories, and Possessions

AGENCY: Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board (Board).

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, is publishing a final rule to eliminate the exemption from regulations regarding Cost Accounting Standards for contracts executed and performed entirely outside the United States, its territories, and possessions.

DATES: *Effective Date:* October 11, 2011.

FOR FURTHER INFORMATION CONTACT: Raymond J. M. Wong, Director, Cost Accounting Standards Board (*telephone:* 202–395–6805; *e-mail: Raymond_wong@omb.eop.gov*).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process—Changes to 48 CFR Part 9903

The CAS Board's regulations and Standards are codified at 48 CFR chapter 99. This notice concerns the amendment of a CAS Board regulation other than a Standard, and as such is not subject to the statutorily prescribed rulemaking process for the promulgation of a Standard at 41 U.S.C. 1502(c) [formerly, 41 U.S.C. 422(g)]. The document being published today is a Final Rule.

B. Background and Summary

The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, is publishing a final rule to eliminate the exemption at 48 CFR 9903.201–1(b)(14) from the Cost Accounting Standards for contracts executed and performed entirely outside the United States, its territories, and possessions (hereafter referred to as the ''(b)(14) overseas exemption'').

The CAS Board is publishing a final rule which eliminates the (b)(14) overseas exemption from CAS for contracts and subcontracts executed and performed entirely outside the United States, its territories, and possessions.

Statutory Requirement

Section 823(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA FY 2009) required the CAS Board to: ''(1) Review the inapplicability of the cost accounting standards, in accordance with existing exemptions, to any contract and subcontract that is executed and performed outside the United States when such a contract or subcontract is performed by a contractor that, but for the fact that the contract or subcontract is being executed and performed entirely outside the United States, would be required to comply with such standards; and (2) determine whether the application of the standards to such a contract and subcontract (or any category of such contracts and subcontracts) would benefit the Government.'' Section 823 further required the CAS Board to publish a request for information and to submit to the appropriate committees of Congress a report containing: (1) Any proposed revision to the CAS regulations as a result of the review and a copy of any proposed rulemaking implementing the revision or (2) if no revision and rulemaking are proposed, a detailed justification for such decision.

History of the (b)(14) Overseas Exemption

The (b)(14) overseas exemption was first promulgated in 1973 at Section 3–1204 of the Armed Services Procurement Regulation (ASPR). See Defense Procurement Circular No. 115 (dated September 24, 1973). The reason given for promulgation of the (b)(14) overseas exemption was that the underlying authority for CAS, Section 2168 of the Defense Production Act (DPA), was applicable to the United States, its Territories and possessions, and the District of Columbia (Section 2163 of the DPA). The (b)(14) overseas exemption was intended to eliminate confusion that had existed at that time over the applicability of CAS outside the United States.

In 1980, the CAS Board ceased to exist under the DPA. Congress reestablished the CAS Board in 1988 under Section 22 of the OFPP Act, 41 U.S.C. 1501 [formerly, 41 U.S.C. 422]. Unlike the DPA, under the OFPP Act, CAS is not limited in applicability to the United States. However, in 1991, the CAS Board, after reviewing the rules and regulations applicable to the administration of CAS, opted to retain the (b)(14) overseas exemption.

The CAS Board later sought to reevaluate the (b)(14) overseas exemption. On September 13, 2005, the CAS Board published a notice seeking comment on the Staff Discussion Paper (SDP) discussing the appropriateness of continuing the exemption (70 FR 53977). Only three public comments were received, all of which supported retaining the exemption. The CAS Board took no further action at that time and published a notice discontinuing the review on February 13, 2008 (73 FR 8259).

In response to Section 823(a) of NDAA FY 2009, the CAS Board published on April 23, 2009, another notice requesting information on six general questions regarding the (b)(14) overseas exemption (74 FR 18491). In addition to this notice, the CAS Board requested assessments directly from three Federal agencies with significant volume of contracts performed outside of the United States—the Department of Defense (DOD), the Department of State (DOS) and the United States Agency for International Development (USAID). After reviewing the comments received from the notice and the assessments of the three Federal agencies, the CAS Board published a Notice of Proposed Rule (NPR) on October 20, 2010, proposing to eliminate the (b)(14) overseas exemption (75 FR 64684). A copy of the proposed rule was provided to the appropriate committees of Congress in accordance with Section 823.

Conclusions

The CAS Board has considered the comments received in response to the NPR, which are available to the public on the CAS Board's Web site at *http://www.whitehouse.gov/omb/casb_index_public_comments/* and *http://www.regulations.gov,* and has concluded that the (b)(14) overseas exemption should be eliminated. Although the CAS Board's responses to specific comments received are discussed later in this notice, the principal reasons for eliminating the exemptions are as follows:

(1) The statutory basis originally used to justify the (b)(14) overseas exemption no longer exists. Absent such justification, the CAS Board must give deference to the existing CAS applicability statutes as mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States (41 U.S.C. 1502(b)(1)(B) [formerly, 41 U.S.C. 422(f)(2)(A)]).

(2) There is not an accounting basis for the (b)(14) overseas exemption. The place of contract execution and performance is not germane to the fundamental requirements and practices set forth in CAS used to measure, assign, and allocate the costs of contract performance.

(3) The CAS Board was not persuaded that the imposition of CAS in situations where the (b)(14) overseas had been applied would create hardships for Federal agencies, prime contractors, and subcontractors, particularly in view of mitigating factors. Foremost among these factors would be that a contractor would still have available the exemption at 48 CFR 9903.201–1(b)(4) which states ''Contracts and subcontracts with foreign governments or their agents or instrumentalities or, insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned, any contract or subcontract awarded to a foreign concern.'' In the CAS Board's view, the imposition of CAS 401, ''Consistency in Estimating, Accumulating and Reporting Costs,'' and CAS 402, ''Consistency in Allocating Costs Incurred for the Same Purpose,'' are the minimal requirements necessary to meet the requirements of CAS. In the Board's view, these minimal requirements are not substantively different from what is already imposed under the Federal Acquisition Regulation (FAR).

C. Public Comments to the Notice of Proposed Rule

In response to the NPR, the CAS Board received a total of five comments from a Federal agency, consultant, public interest group, and industry and trade associations. The comments, which were all considered by the Board in its deliberations, reflected a difference of views on whether to retain or eliminate the (b)(14) overseas exemption. They are summarized and addressed in this section, grouped by common themes.

1. *Comment:* Two respondents supported the CAS Board's proposed rule to eliminate the (b)(14) overseas exemption.

Response: The CAS Board noted the agreement.

2. *Comment:* One respondent believed that eliminating the (b)(14) overseas exemption will have a very narrow impact in terms of the number of foreign concerns which will become subject to the consistency requirements of CAS 401 and 402, respectively, consistency in estimating, accumulating and reporting costs, and consistency in allocating costs incurred for the same purpose. Contract savvy foreign concerns will attempt to enter into contracts where another CAS exemption is applicable. To the contrary, another respondent opined that there is a misconception that some other CAS exemptions are applicable if the (b)(14) overseas exemption is eliminated. The respondent opined that the other CAS exemptions are of limited applicability, and that even the limited applicability of CAS 401 and 402 would be a deterrent to foreign concerns in accepting subcontracts to satisfy the U.S. contractors' offset requirements. A greater deterrent to foreign concerns are the requirements to submit a CAS Disclosure Statement and notifications of changes in accounting practice with cost impact analyses.

Response: The imposition of CAS 401 and CAS 402 are not likely to be a hardship, since they are already substantively applied by the FAR. The threshold for submitting a CAS Disclosure Statement was significantly increased in 2000 to $50 million in recognition that this requirement should be applied to levels of contracting activity where a more formal disclosure was appropriate.

3. *Comment:* One respondent noted that there is an obvious accounting basis for retaining the (b)(14) overseas exemption, specifically, the differences between the fundamental accounting principles between U.S. GAAP (Generally Accepted Accounting Principles) and IFRS (International Financial Reporting Standards).

Response: The CAS Board does not believe differences between GAAP and IFRS are relevant to the question of extending the (b)(14) overseas exemption.

4. *Comment:* Two respondents noted that the costs of CAS administration would exceed any benefits achieved from requiring CAS. One respondent noted that essentially no aspect of the CAS rulemaking during the past 37 years has received any input from entities otherwise exempt from all CAS requirements. Another respondent noted that foreign concerns will have difficulty understanding and interpreting the CAS Disclosure Statement, which is published only in English. The respondent also noted that not only foreign concerns will have administrative costs in implementing and administering CAS for foreign concerns; the Government, and higher tier subcontractors and prime contractors with foreign concerns as subcontractors will also have administrative costs associated with administering the CAS Disclosure Statement process, as well as the cost impacts for cost accounting changes and CAS non-compliances.

Response: For reasons previously discussed, the CAS Board does not agree that the administrative costs of essentially applying CAS 401 and CAS 402 will exceed the benefits received by the taxpayers. There presently are foreign concerns, unable to take advantage of the (b)(14) overseas exemption, that are able to comply with the applicable requirements of CAS. Moreover, the same requirements are in the FAR.

5. *Comment:* Two respondents raised concerns about an unintended consequence of imposing CAS on foreign concerns: the negative impact on exports which would result. The expressed concern was that the U.S. aerospace export sales would be endangered. The respondents stated that U.S. aerospace export sales have been enabled by the purchase of parts supplied by foreign concern subcontractors who are currently exempted from CAS, presumably by the (b)(14) overseas exemption. The respondents argued that contractors must satisfy offset requirements in order to make the sale to the foreign country. Offset requirements are host country industrial participation requirements imposed by the foreign host country as a condition of the contract. Contractors establish relationships with foreign subcontractors to develop potential offset placements to position themselves

for future contract awards for export sales. Such relationships are established and developed with strategic placement of subcontracts for contracts with the U.S. in anticipation of new export sales opportunities and related offset obligations.

Response: Based on these comments, the CAS Board sought additional guidance on the matter of exports. Aerospace sales to foreign countries are made through either foreign military sales (FMS) contracts with the U.S. Government as the party to the contract with the contractor or contracts executed directly between the foreign host country and the U.S. contractor as a ''commercial sale.'' The CAS requirements are only imposed on sales to the U.S. Government (in this case, to the FMS contracts), and not on a commercial sale made directly with the foreign host country. U.S. Government funded FMS contracts do not have offset requirements, while foreign government funded FMS contracts may have offset requirements. In those instances when there are offset requirements in FMS contracts, the imposition of CAS 401 and CAS 402, if applicable, are not likely to be a hardship, since they are already substantively applied by the FAR for subcontracts. See the responses to Comments 2 and 4.

6. *Comment:* One respondent stated that the other CAS exemptions or applicability requirements are not applicable to foreign concerns, generally. Sealed bidding would not be effective for subcontracting to meet offset requirements where discussions are likely to be necessary. The CAS applicability threshold of $650,000 (soon to be adjusted to $700,000) still leaves many foreign concern subcontractors subject to it. The small business exemption from CAS only applies to U.S. businesses. While contracts and subcontracts with foreign governments or their instrumentalities are exempted from CAS, other foreign concerns are still subject to CAS 401 and 402, which would be a deterrent to foreign concerns accepting subcontracts to satisfy offset for U.S. contractors when they do not have CAS requirements for subcontracts with non-U.S. contractors. The larger deterrent for the larger subcontractors (who exceed the $50 million CAS Disclosure Statement filing threshold) is the Disclosure Statement filing requirement. The CAS exemption applicable when the price is set by law or regulation is irrelevant to foreign concern subcontracts for aerospace products. The CAS exemption for firm-fixed price (FFP) contracts, fixed price contracts with economic price adjustments, and contracts and subcontracts for commercial items has limited applicability. The CAS exemption for the NATO PHM Ship program has limited applicability, and is not germane to foreign concern subcontracts for aerospace products. The limited technical capabilities of the industrial bases of many countries with offset requirements make competition not tenable. Even in the most competitive emerging markets, i.e., India, South Korea, Saudi Arabia, and Turkey, competition in the award of subcontracts will be severely limited by the industrial base, limiting the applicability of the CAS exemption for FFP contracts and subcontracts awarded on the basis of adequate price competition without cost or pricing data.

Response: Whether or not another CAS exemption might apply, aside from the previously discussed exemption at 48 CFR 9903.201–1(b)(4), is not germane to the question of eliminating the (b)(14) overseas exemption. While it is likely that other exemptions might apply in certain situations, it is recognized that some exemptions would never apply. However, finding an alternative exemption that yields the same result as the (b)(14) overseas exemption is not the objective of this assessment. The relevant question is whether, given the absence of conditions which created the exemption in the first place, there are other sufficient reasons for retaining the exemption. As previously stated, the CAS Board has not been persuaded that there are other sufficient reasons for retaining the exemption.

7. *Comment:* A respondent noted that the CAS waiver process is not suitable in the foreign concern subcontracting context. A CAS waiver must be requested by an agency, rather than the contractor, considering the needs of the agency with supporting justification from the perspective of the agency. The waiver process is not conducive to the offset obligations of the contractor as the offset requirement may be contrary to the requirement to establish other sources to avoid a waiver in the future.

Response: The CAS Board agrees that the waiver process may be arduous. However, given that only CAS 401 and CAS 402 would be imposed in the absence of the (b)(14) overseas exemption, the CAS Board believes it is unlikely that a CAS waiver would be requested.

8. *Comment:* A respondent opined that the impact from the elimination of the (b)(14) overseas exemption on foreign concern subcontractors is understated. The respondent stated the impact of eliminating (b)(14) overseas exemption will be most acute on foreign concern subcontractors, and the prime contractors and higher-tier subcontractors who have relied on the that exemption historically. Foreign concern subcontractor usage data is not readily available because there is no requirement to capture it. While everyone believes subcontractors will be affected, the scope of the impact is unknown.

Response: The CAS Board understands that the visibility into subcontracting activities of a prime contractor is limited, particularly foreign concern subcontractors. The CAS Board notes that this condition has also been given as reasoning for eliminating the (b)(14) overseas exemption. As previously discussed, the CAS Board believes there will be mitigating factors that lessen the impact on foreign concern subcontractors. If this proves to be unfounded, then the CAS Board can reconsider the (b)(14) overseas exemption.

9. *Comment:* Two respondents stated that the elimination of the (b)(14) overseas exemption is contrary to U.S. export and foreign economic development policies. There is a long standing belief that export of defense industry products benefit the US, and laws and regulations reflect that. NDAA FYs 1988 and 1989 (respectively, Pub. L. 100–202 and 100–456) made allowable the costs of promoting the export of US defense industry products. The March 11, 2010 Executive Order (EO) on the National Export Initiative established the Administration's goal to double exports over the next five years as a critical component to stimulate economic growth in US. Elimination of exemption would create competitive disadvantages for U.S. firms attempting to grow export sales of defense industry products as exports are linked to offsets. A key element of Government policy in war torn and economically underdeveloped countries is to require prime contractors to subcontract with host foreign country subcontractors. Imposition of CAS ''will likely shrink the local competitive landscape, stymie host country economic development, potentially harm project missions, and stress relations with foreign governments.''

Response: The CAS Board does not accept the notion that eliminating the (b)(14) overseas exemption is contrary to U.S. export and foreign economic development policies. No one within the Legislative or Executive Branches has made that claim at any time during the rulemaking process. The CAS Board has not been persuaded that the burden imposed by CAS 401 and CAS 402, as

well as perhaps the CAS Disclosure Statement, will be significant.

10. *Comment:* A respondent observed that the (b)(14) overseas exemption has not been identified as a cause for overseas subcontracting challenges in recent testimonies. On June 29, 2010, Stuart W. Bowen, Jr., Special Inspector General for Iraq Reconstruction, testified before the House Subcommittee on National Security and Foreign Affairs, and identified many subcontracting issues. However, he did not mention the (b)(14) overseas exemption from CAS as a cause for any of the issues, nor did he recommend the imposition of CAS coverage on foreign concern subcontracts as a potential solution. In the July 26, 2010 hearing on war zone subcontracting before the Commission on Wartime Contracting (CWC), none of the witnesses cited the (b)(14) overseas exemption from CAS as contributing to the subcontracting challenges identified during the hearings, nor did any witness recommend the imposition of CAS coverage as a solution to overseas subcontracting problems. None of the CWC commissioners spoke of, or inquired about, subcontractor CAS coverage or CAS compliance during opening statements or witness testimony.

Response: The CAS Board does not accept this reasoning for retaining the (b)(14) overseas exemption.

D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35, subchapter I) does not apply to this rulemaking, because this rule imposes no additional paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq*. The records required by this final rule are those normally maintained by contractors and subcontractors who claim reimbursement of costs under government contracts.

E. Executive Order 12866, the Congressional Review Act, and the Regulatory Flexibility Act

Because the affected contractors and subcontractors are those who are already subject to CAS but for the (b)(14) overseas exemption, and those who are subject to only CAS 401 and 402 under the (b)(4) foreign concern exemption, the economic impact of this final rule on contractors and subcontractors is expected to be minor. As a result, the CAS Board has determined that this final rule will not result in the promulgation of an ''economically significant rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis is not required. For the same reason, the Administrator of the Office of Information and Regulatory Affairs has determined that this final rule is not a ''major rule'' under the Congressional Review Act, 5 U.S.C. chapter 8. Finally, this rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this final rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. chapter 6.

F. List of Subjects in 48 CFR 9903

Government procurement, Cost accounting standards.

Daniel I. Gordon,

Chair, Cost Accounting Standards Board.

For the reasons set forth in this preamble, Chapter 99 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 9903—COST ACCOUNTING STANDARDS

■ 1. The authority citation for Part 9903 is amended to read as follows:

Authority: Public Law 111–350, 124 Stat. 3677, 41 U.S.C. 1502.

9903.201–1 [Amended]

■ 2. Section 9903.201–1 is amended by removing and reserving paragraph (b)(14).

[FR Doc. 2011–20212 Filed 8–9–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110112022–1262–02]

RIN 0648–BA45

Atlantic Highly Migratory Species; Modification of the Retention of Incidentally-Caught Highly Migratory Species in Atlantic Trawl Fisheries

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

ACTION: Final rule.

SUMMARY: This final rule modifies the permitting requirements and retention limits for Atlantic highly migratory species (HMS) that are incidentally-caught in Atlantic trawl fisheries. This action will reduce regulatory dead discards of incidentally-caught Atlantic swordfish in the *Illex* squid trawl fishery by establishing a new Incidental HMS Squid Trawl permit for all valid *Illex* squid moratorium permit holders. The Incidental HMS Squid Trawl permit will allow up to 15 swordfish per trip to be retained. The final rule also establishes a retention limit for smoothhound sharks in all Atlantic trawl fisheries. These actions are necessary to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to implement the 2006 Consolidated HMS Fishery Management Plan (Consolidated HMS FMP), including objectives in the FMP to monitor and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of HMS stocks, and to provide the data necessary for assessing HMS fish stocks and managing HMS, including addressing inadequacies in current data collection and the ongoing collection of economic and bycatch data in Atlantic HMS fisheries.

DATES: Effective *August 10, 2011*, except for the amendments to § 635.21(e)(3)(i), § 635.24(a)(7), and § 635.71(d)(18), which are delayed indefinitely. NMFS will publish a document in the **Federal Register** announcing the effective dates for this amendments.

ADDRESSES: Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the supporting documents—including the Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), small entity compliance guide, and the 2006 Consolidated Atlantic HMSFMP—are available from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/*. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the HMS Management Division (see above) and by e-mail to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Rick Pearson at (727) 824–5399, Steve Durkee at (202) 670–6637, or Delisse Ortiz at (301) 427–8503.

SUPPLEMENTARY INFORMATION: North Atlantic swordfish and smoothhound shark species are managed under the

authority of the Magnuson-Stevens Act. Swordfish are also managed under the authority of the Atlantic Tunas Convention Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the FMP for Atlantic Tunas, Swordfish, and Sharks. On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries. The implementing regulations for the Consolidated HMS FMP and its amendments for Atlantic HMS are at 50 CFR part 635.

Background

On March 18, 2011, NMFS published a proposed rule (76 FR 14884) in the **Federal Register** to modify the permitting requirements and retention limits for incidentally-caught HMS in Atlantic trawl fisheries. The proposed rule addressed two separate, but related, issues: (1) The retention of incidentally-caught swordfish in the *Illex* squid trawl fishery; and, (2) the retention of incidentally-caught species in the smoothhound shark complex (including smooth dogfish and Florida smoothhound (genus *Mustelus*)) in all Atlantic trawl fisheries. This rule finalizes the proposed management measures in the March 18, 2011, proposed rule. These final actions are necessary to achieve domestic management objectives under the Magnuson-Stevens Act and ATCA, and to implement the Consolidated HMS FMP and its amendments. This includes objectives in the FMP to monitor and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of HMS stocks, and to provide the data necessary for assessing HMS fish stocks and managing HMS, including addressing inadequacies in current data collection and the ongoing collection of economic and bycatch data in Atlantic HMS fisheries. NMFS will be issuing the new Incidental HMS Squid Trawl permit out of its Northeast Regional Permit Office pursuant to this final rule and other applicable provisions of 50 CFR part 635. Application procedures will be similar to those used for the *Illex* squid moratorium permit.

NMFS considered four alternatives to address the retention of incidentally-caught swordfish in squid trawl fisheries (Issue A), and three alternatives to address the retention of incidentally-caught smoothhound sharks in trawl fisheries (Issue B).

Alternative A1, the status quo, would maintain existing HMS permit requirements and incidental swordfish retention limits in squid trawl fisheries. The second alternative (A2), the selected final action, would implement a new permit (referred to as the Incidental HMS Squid Trawl permit) for *Illex* squid moratorium permit holders to retain up to 15 swordfish per trip, the current squid trawl limit. The third alternative (A3) would exempt *Illex* squid moratorium permit holders from current HMS permit requirements (*i.e.,* the ''HMS permit triple-pack'') and allow them to retain up to 15 swordfish when fishing for squid. Finally, the fourth alternative (A4) would establish either a new Incidental HMS Squid Trawl permit available to all vessel owners currently issued a *Loligo* squid moratorium permit, or establish an exemption from the need for *Loligo* squid trawl vessels to be issued the ''HMS permit triple-pack'' to retain swordfish.

Currently, there are no management measures in effect for smoothhound sharks, thus trawl vessels may retain unlimited amounts of this species. All smoothhound shark management measures, including a commercial permit requirement and a commercial quota, will be implemented in the future when smoothhound sharks are fully incorporated into the HMS management unit, and upon completion of regulations implementing the Shark Conservation Act of 2010. Consistent with the stated intent of Amendment 3 to minimize changes to the fishery, trawl gear is not authorized as an HMS gear, but NMFS indicated that vessels with trawl gear could harvest smoothhound shark species at incidental levels, similar to swordfish. Thus, without the action being considered in this rulemaking, the retention of trawl-caught smoothhound sharks would be prohibited in the future because the gear is not authorized. Accordingly, all of the alternatives for Issue B are analyzed relative to the time when smoothhound shark measures are in effect. For Issue B, under the no action alternative (B1), when smoothhound sharks are fully incorporated into the HMS management unit, their retention would be prohibited by trawl vessels. Alternative B2, the final action, would allow for the retention of smoothhound sharks caught incidentally in trawl gear in an amount not to exceed 25 percent of the total catch, by weight, when smoothhound sharks are fully incorporated into the HMS management unit. Finally, Alternative B3 would allow for the retention of smoothhound sharks caught incidentally in trawl gear, in an amount not to exceed 50 percent of the total catch, by weight.

The proposed rule contained additional details regarding the impacts of the alternatives considered and a brief summary of the recent management history. Those details are not repeated here.

Response to Comments

During the proposed rule stage, NMFS received seven written comments from non-governmental organizations, fishermen, dealers, and other interested parties. NMFS also heard numerous comments from constituents in attendance at the five public hearings. A summary of the major comments received on the proposed rule during the public comment period is shown below with NMFS' responses. All written comments submitted during the comment period can be found at *http://www.regulations.gov/by* searching for RIN 0648–BA45.

Issue A—Squid Trawl/Swordfish Comments

Comment 1: NMFS should implement preferred Alternative A2 because it will improve data collection. Regulatory dead discards of swordfish contribute to scientific uncertainty. Swordfish are incidentally-caught in the *Illex* squid trawl fishery, so those fish should be counted. NMFS will gain ecological benefits associated with obtaining more reliable data.

Response: NMFS agrees. NMFS is implementing preferred Alternative A2 to improve data collection. Swordfish discard estimates are currently required to be reported in the Northeast Fishing Vessel Trip Report (VTR). Allowing for the limited retention of swordfish by all vessels issued *Illex* squid moratorium permits will require that those fish be sold to a permitted swordfish dealer who must submit bi-weekly dealer reports. Bi-weekly swordfish dealer reports will provide more precise landing weights than those currently obtained from VTR discard estimates. Also, establishing a new Incidental HMS Squid Trawl Permit will enable NMFS to place observers on those

vessels to obtain additional catch and effort data specific to HMS in the future, if necessary.

Comment 2: NMFS should implement preferred Alternative A2 because it will provide economic benefits by reducing dead discards of swordfish and converting them into landings. It is painful for so many *Illex* squid trawl vessels to discard incidentally-caught dead swordfish just because they do not have the correct HMS permits. The swordfish stock is fully rebuilt, so there is potential for more landings. The positive economic impacts to an individual vessel would be helpful. Preferred Alternative A2 would also be a great benefit to New Jersey ports, especially Cape May, where many *Illex* vessels unload.

Response: NMFS agrees. Alternative A2, the final action, is estimated to result in moderate economic benefits ranging from $3,849–$4,145 annually for individual active *Illex* squid trawl vessels. These estimates are based upon historical observer data that indicates an average of 1.2–3.3 swordfish discards per *Illex* trip. For trips that land the maximum of 15 swordfish, the additional ex-vessel revenue associated with those landings could be approximately $4,441 per *Illex* trip. However, because *Illex* fishery encounters with swordfish are primarily concentrated in July and August and relatively few vessels actively participate in the fishery, NMFS does not anticipate that a large number of squid trawl trips will land the maximum allowable limit. This final rule will lessen economic waste by allowing swordfish that are incidentally-caught while trawling for *Illex* squid to be retained and sold, rather than discarded dead. Fishing ports in Rhode Island and New Jersey are expected to be positively impacted by this rule because these states historically account for more than 90 percent of *Illex* squid landings.

Comment 3: NMFS should not implement Alternatives A2–A4 because the squid trawl fishery could become a directed swordfish fishery in the future due to the value of swordfish. Allowing all *Illex* squid trawl vessels to retain up to 15 swordfish per trip will create an incentive for those vessels to target swordfish.

Response: NMFS disagrees. The current HMS regulations specify that a vessel is considered to be in the squid trawl fishery when squid constitutes not less than 75 percent of the total fish on board and when trawl gear is the only gear on board. This means that a vessel would have to catch at least 5,000 lb. of squid to retain approximately 15 average-sized (112 lb.) swordfish. Given that the *Illex* quota has held steady since 2000 at 24,000 mt for the entire fishery, during which landings have been averaging about 11,800 mt annually, individual vessel landings of 5,000 lb do not always occur. NMFS intends to monitor the fishery to ensure that the 15-fish retention limit is appropriate and consistent with the goal of maintaining the incidental nature of swordfish catches by squid trawl vessels.

Comment 4: Due to a variety of economic factors like fuel costs, effort in many trawl fisheries has declined. If squid trawl fisheries are allowed to retain swordfish, fishing trips could become more profitable, which could encourage fishermen, who are not currently fishing, to fish. Because of the likelihood of increased trawl fishing effort, NMFS has incorrectly determined that ''the action will not be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH)'' and ''that the action will not reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species.'' Therefore, the draft Finding of No Significant Impact (FONSI) is incorrect. There will be a significant impact from this action and NMFS should prepare both an Environmental Impact Statement (EIS) and a Biological Opinion (BiOp).

Response: NMFS disagrees. The *Illex* squid fishery is managed by the Mid-Atlantic Fishery Management Council (MAFMC) under the Atlantic Mackerel, Squids, and Butterfish Fishery Management Plan (MSB FMP). The MAFMC annually recommends an Acceptable Biological Catch (ABC) and a Domestic Annual Harvest (DAH) level. NMFS is required to close the directed *Illex* squid fishery when 95 percent of the DAH is achieved. Therefore, *Illex* squid fishing effort is effectively capped at a scientifically-determined upper quota limit. Because an EIS has been prepared for the MSB FMP, a BiOp has been developed for the fishery, and the MSB FMP has been determined to comply with the Magnuson-Stevens Act and its National Standards, any level of legal *Illex* squid fishing effort below 95 percent of the DAH has already been analyzed. The *Illex* squid fishery has been landing an average of 59 percent (range: 38–77 percent) of the ABC since 2005, so it is possible that squid trawl fishing effort could increase. However, an increase would not be solely because of this final HMS rule. Squid trawl vessels tend to be specialized and are designed to capture small pelagic species such as squid, mackerel, and butterfish. The primary factors influencing effort in this fishery are ex-vessel prices of those species, seasonal availability, and the amount of fixed gear in the water column from other fisheries. Although landings by value per individual moratorium-permitted vessel have fluctuated from 2002 to 2006, the vast majority of *Illex* landings (96 percent) during this period came from only 22 distinct vessels. The additional revenue associated with the sale of incidentally-caught swordfish for a period of approximately 2–3 months ($3,849–$4,145 annually per vessel) is not expected to offset the startup costs associated with this fishery or provide sufficient incentive for large numbers of currently inactive *Illex* squid vessels to reactivate. If some squid vessels do reactivate or increase their fishing effort, the fishery as a whole would continue to be limited by the ABC and DAH specified annually under the MSB FMP.

Comment 5: NMFS should implement Alternative A4, which would establish either a new permit or an exemption for *Loligo* squid moratorium permit holders to retain swordfish. NMFS should allow for the retention of swordfish by both *Illex* and *Loligo* squid moratorium permit holders.

Response: As explained in the Environmental Assessment, swordfish discards are much higher in the *Illex* squid trawl fishery than in the *Loligo* fishery. Based upon Northeast Fisheries Science Center (NEFSC) observer data, the average number of swordfish discards per *Illex* tow equals 0.11 (105 total discards/976 total tows = 0.11 discards/tow), and the average number of swordfish discards per tow in the *Loligo* fishery equals 0.01 (36 total discards/4,697 total tows = 0.01). In other words, swordfish discards are approximately 10 times higher in the *Illex* squid trawl fishery. This is because the *Loligo* fishery primarily operates inshore during summer months whereas the *Illex* fishery operates in the offshore Mid-Atlantic canyons during the summer where swordfish are more prevalent. Also, 75 out of 76 *Illex* squid moratorium permit holders have been issued a *Loligo* squid moratorium permit, so some of the swordfish discards in the *Loligo* fishery could be from these vessels. The data clearly indicate that the highest level of swordfish discards occur in the *Illex* squid fishery. Therefore, this final rule implements Alternative A2, which establishes a new HMS permit for *Illex* squid moratorium permit holders to retain up to 15 incidentally-caught swordfish per trip.

Comment 6: NMFS should not have any restrictions on the number of swordfish allowed to be kept by squid trawl vessels, provided that all of the fish are accurately counted. Squid trawl vessels should be allowed to keep everything they catch, especially if the United States is not catching its ICCAT-recommended swordfish quota. A 15-fish limit could be restrictive. There may be instances when that limit is exceeded. There is also the potential for ''high-grading'' under a 15-fish limit, where fishermen discard all but the largest fish. Large freezer boats would especially benefit from a higher incidental swordfish trip limit. If the 15-fish limit is too restrictive and dead discards still occur, there should be a regulatory mechanism to quickly increase the limit.

Response: NMFS disagrees. The incidental swordfish retention limit for squid trawl vessels was increased from five to 15 swordfish in 2007 (72 FR 31688, June 7, 2007). Based upon logbook analysis and public comment, it was determined that 15 swordfish was an appropriate limit for the vast majority of squid trawl trips. Since the limit was increased in 2007, NMFS has not received any comments from active squid trawl vessel operators indicating that the current limit is too restrictive, and additional analysis prepared for this rulemaking indicates an average range of 1.2–3.3 swordfish discards per *Illex* squid trip, with some trips catching more and others less. The purpose of this rulemaking is to modify the permitting requirements for squid trawl vessels and not to reconsider the current squid trawl incidental retention limit. Should the limit need to be revised, either lower or higher due to targeted fishing or continued discards, respectively, NMFS might reconsider the issue in a future rulemaking.

Comment 7: NMFS should authorize trawl gear for swordfish.

Response: Trawl gear is not authorized for the retention of any HMS. Because swordfish have historically been captured incidentally while trawling for squid, NMFS created a small allowance for some HMS-permitted squid trawl vessels to retain swordfish. However, many squid trawl vessel owners did not qualify for, or obtain, the required HMS permits. This final rule creates a new Incidental HMS Squid Trawl permit, which will be available to all *Illex* squid moratorium permit holders to retain incidentally-caught swordfish, provided that squid constitute not less than 75 percent of the catch on board and trawl is the only commercial fishing gear on board. Authorizing trawl gear for all HMS, beyond allowing for limited incidental capture, is beyond the scope of this rulemaking and would require an Amendment to the HMS FMP and significant additional analysis.

Comment 8: NMFS should clarify whether the permit proposed in Alternative A2 will be available to all *Illex* permitted vessels or only to active *Illex* vessels, and whether there will be any other qualification criteria for obtaining the permit.

Response: As indicated in the response to Comment 7, the new Incidental HMS Squid Trawl permit will be available to all vessels issued a valid *Illex* squid moratorium permit, provided that all other requisite permit qualification criteria are met (reporting requirements, complete application, *etc.*).

Comment 9: NMFS should clarify whether squid trawl vessels will need to have at least 75 percent *Illex* squid on board, or just squid, to be considered in the squid trawl fishery.

Response: A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel. The squid do not have to be exclusively *Illex* squid.

Comment 10: NMFS should clarify whether the HMS ''permit triple pack'' will be required for *Loligo* squid moratorium permit holders to retain swordfish if Alternative A2 is implemented.

Response: The HMS ''permit triple pack'' will no longer be applicable for vessels that are participating in the squid trawl fishery upon the effective date of this final rule. After that date, the only permit that will allow any squid trawl vessel, *Illex* or *Loligo,* to retain swordfish will be the Incidental HMS Squid Trawl permit, which is available only to vessels issued a valid *Illex* squid moratorium permit.

Comment 11: NMFS should clarify whether *Illex* squid moratorium permit holders will have to surrender their HMS ''permit triple pack'' if a new Incidental HMS Squid Trawl permit is implemented under Alternative A2.

Response: As described in the response to Comment 10, the only permit that will allow for the retention of swordfish by squid trawl vessels will be the Incidental HMS Squid Trawl permit upon the effective date of this final rule. NMFS has determined that approximately five squid trawl vessels are currently issued the HMS ''permit triple-pack.'' These permit holders may either transfer their HMS ''permit triple pack'' to another vessel, or let their swordfish and shark permits expire and then terminate 1 year after the expiration date. Atlantic Tunas Longline permits do not terminate 1 year after the expiration date. Vessel owners also have the option of maintaining their HMS ''permit triple pack'' through annual renewal. The permits do not have to be surrendered.

Comment 12: NMFS should allow incidental squid permit holders to retain swordfish rather than just *Illex* squid moratorium permit holders.

Response: NMFS disagrees. The vast majority of *Illex* squid landings come from vessels issued an *Illex* squid moratorium permit (99 percent, on average, from 2002–2006). Most swordfish discards occur during *Illex* squid fishing. Thus, *Illex* squid moratorium permit holders are more likely to capture swordfish than incidental squid permit holders, and NMFS is restricting qualification for the Incidental HMS Squid Trawl permit to *Illex* moratorium vessels.

Comment 13: NMFS should clarify whether *Illex* squid moratorium permit holders issued an Incidental HMS squid trawl permit will have to report their swordfish separately in the HMS logbook or whether they could report their swordfish in the Northeast Vessel Trip Report (VTR) logbook.

Response: Illex squid moratorium permit holders issued an Incidental HMS Squid Trawl permit will be required to report their swordfish in the Northeast VTR logbook. NMFS could also select Incidental HMS Squid Trawl permit holders to report their catch in the HMS logbook, but that is not being considered at this time. If NMFS decides to require those permit holders to report in the HMS logbook, NMFS would notify individuals of that requirement and provide instructions on how to comply with the requirement. NMFS reminds fishermen that swordfish may only be sold to dealers issued a valid Swordfish Dealer permit.

Comment 14: NMFS should carefully monitor the swordfish fishery if Alternative A2 is implemented to make sure its assumption of no expected changes in fishing effort is correct.

Response: NMFS agrees. The Agency intends to monitor the squid trawl fishery and periodically report on it in the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Report. The information may include, but is not limited to, the number of squid trawl vessels landing swordfish and the amount of swordfish being landed by squid trawl vessels.

Comment 15: NMFS should clarify whether squid trawl vessels will continue to be allowed to fish in the

pelagic longline (PLL) closed areas if Alternative A2 is implemented.

Response: Squid trawl vessels issued an Incidental HMS Squid Trawl permit will continue to be allowed to fish in the PLL closed areas. However, the *Illex* squid trawl fishery generally does not occur in PLL closed areas, including the East Florida Coast, DeSoto Canyon, and Charleston Bump PLL closed areas. There could potentially be some overlap with the one-month Northeastern U.S. PLL closure, but the incidental catch of BFT and other HMS by squid trawl vessels is very low and retention is prohibited.

Issue B—Smoothhound Shark Trawl Comments

Comment 16: NMFS should allow Atlantic trawl fishermen to retain smoothhound sharks to reduce regulatory discards.

Response: NMFS agrees. NMFS intends to allow trawl fishermen to retain incidentally-caught smoothhound sharks to reduce regulatory discards of these species and to maintain the historic nature of the Atlantic trawl fishery. Based on catch and landings data over the past 10 years, trawl fishermen rarely target smoothhound sharks. Those that are retained are typically caught incidentally while fishing for other species such as *Loligo* squid, summer flounder, scup, and whiting. Consistent with the intent of Amendment 3 to the 2006 Consolidated HMS FMP to minimize changes to the smoothhound shark fishery, Alternative B2 is NMFS's preferred alternative to address the retention of smoothhound sharks caught incidentally in trawl gear.

Comment 17: A smoothhound shark retention limit of 25 percent of the total catch, by weight, is too restrictive and will not effectively reduce regulatory discards.

Response: NMFS disagrees. Implementing any retention limit could potentially create regulatory discards. However, a retention limit of 25 percent smoothhound sharks, by weight, was specifically chosen to minimize regulatory discards while ensuring that the trawl fishery for smoothhound sharks remains incidental. This limit incorporates 89 percent of the trips that have occurred over the last 10 years, and precludes only 11 percent of trips with high smoothhound shark retained catch. Because the retention limit incorporates a very large proportion of historical trips (89 percent), NMFS believes the alternative is appropriate. It achieves a balance between minimizing changes to the smoothhound shark fishery while preserving the incidental nature of the trawl fishery.

Comment 18: A smoothhound shark retention limit equivalent to 25 percent of the total catch, by weight, is too high and will encourage directed trawl fishing effort on smoothhound sharks.

Response: NMFS disagrees. Although a 25-percent retention limit incorporates the vast majority of historical trawl trips, it is not high enough to encourage a directed fishery. Smoothhound sharks have been unregulated since the fishery developed in the mid-1990s. Catch and landings data from the past 10 years indicate that, even when unmanaged, a directed trawl fishery for smoothhound sharks has not developed. NMFS does not believe that implementing a retention limit for smoothhound sharks caught in trawl gear will encourage a directed fishery.

Comment 19: The proposed smoothhound shark retention limit could alter commercial trawl fishing effort or behavior.

Response: NMFS disagrees. Even while the fishery has been unregulated, trawl fishermen have rarely targeted smoothhound sharks. Because smoothhound sharks are caught and retained incidentally when fishing for other species, it is not likely that trawl fishermen will change their fishing effort or behavior to catch smoothhound sharks solely because of the implementation of a retention limit.

Comment 20: Implementing a percentage-based retention limit will be difficult to comply with since it will require that both the smoothhound shark portion of the catch and the total catch be weighed. Obtaining at-sea weights is very difficult, so it will be difficult to definitively calculate the percent of catch while at sea. Enforcement action could only occur at the dock. Many comments recommended that a single total allowable weight of smoothhound sharks should be used as the retention limit. The Mid-Atlantic Fishery Management Council encouraged NMFS to explore a 5,000 lb trip limit as an alternative to the 25-percent retention limit.

Response: This comment was expressed by several constituents. Although NMFS did not include an alternative for an absolute weight retention limit in the proposed rule, the Agency did perform additional analyses pursuant to this comment for the final rule to determine the feasibility of this recommendation. The analysis was based upon the preferred alternative (*i.e.,* a 25-percent smoothhound shark retention limit relative to total catch). The next step was to determine an absolute weight that is equivalent to the 25-percent retention limit. To calculate an absolute weight equivalent, NMFS analyzed VTR data from trawl trips that caught smoothhound sharks between 2000 and 2009. As expected, the vast majority of trawl trips had a very low total weight of smoothhound sharks, which is indicative of an incidental fishery. However, there was very little correlation between percent catch and weight. This is likely due to the wide range in hold capacities of vessels that retain smoothhound sharks caught in trawl gear. Once the smoothhound trawl trips were plotted, NMFS investigated several options to find an equivalent weight, including the use of ''best fit'' trend lines and finding a retention weight that incorporates the same proportion of trips as the preferred alternative (89 percent of trips). Due to the wide range of weights, NMFS was not able to determine a useable and robust retention limit equivalent to 25 percent catch. Furthermore, the two methods found equivalent retention limits that ranged from 145 lbs–900 lbs; both of which are substantially lower than the MAFMC's suggestion, and too low and variable to maintain the historical nature of the trawl fishery. Through this analysis, NMFS determined that an absolute weight retention limit would not prevent directed effort by smaller trawl boats with low catch levels and could be overly restrictive for larger vessels. Thus, NMFS is implementing Alternative B2, which provides a ''sliding scale'' in the form of a percentage and allows trawl vessels of all sizes to retain incidentally-caught smoothhound sharks while also preventing all trawl vessels from directing effort on smoothhound sharks. This approach is consistent with other HMS incidental trawl retention limits, including swordfish. With regards to compliance, trawl fishermen are encouraged to maintain an ongoing tally during fishing operations to ensure that their smoothhound shark catch is not excessive. Because trawls are being managed as an incidental gear, trawl fishermen are discouraged from actively targeting smoothhound sharks. NMFS agrees that at-sea enforcement of the 25-percent retention limit will be difficult in some cases but disagrees that it is impossible in all cases. As the commenter notes, the retention limit may also be enforced dockside during offloading.

Comment 21: Trawl gear, like gillnet gear, should be an authorized gear in the smoothhound shark fishery and fishermen should be allowed to direct effort on the species.

Response: As discussed in the response to Comment 7, trawl gear is

not authorized for any HMS. However, because smoothhound sharks have historically been captured incidentally while trawling for squid, summer flounder, scup, whiting, and other species, NMFS is implementing a small allowance for all trawl vessels to retain incidentally-caught smoothhound sharks similar to the small allowance allowed for swordfish by squid trawl vessels. This allowance is intended to maintain the historical nature of incidental catches of smoothhound sharks in Atlantic trawl fisheries.

Comment 22: A smoothhound shark stock assessment should be a priority due to the unknown status of these species.

Response: A stock assessment is fundamental to ensure the effective management of a fishery. However, stock assessments require a variety of data inputs, including landings and discard data reported by fishermen. At this time, much of the data on smoothhound sharks are incomplete. One of the objectives of Amendment 3 is to collect data that can be used to inform future stock assessments.

Comment 23: NMFS received a comment requesting that trawl fishermen that catch smoothhound sharks not be required to fill out a separate logbook.

Response: Under Alternative B2, the final action, trawl fishermen who retain incidentally-caught smoothhound sharks will be required to obtain an open-access commercial smoothhound shark permit. Currently, there is no reporting requirement associated with the permit. In the future, NMFS may decide that logbooks or other reporting mechanisms are appropriate. However, NMFS will not pursue this unless existing reporting methods prove to be inadequate, until NMFS understands the universe of permitted smoothhound shark fishermen, and until NMFS can determine the most appropriate mechanism for reporting while minimizing duplication with current reporting requirements.

Comment 24: Smoothhound shark trawl landings should be deducted from the overall smoothhound shark quota and there should be no specific gear quota allocations.

Response: NMFS agrees. The smoothhound shark quota was developed in Amendment 3 to the Consolidated HMS FMP and will be implemented when other management measures for smoothhound sharks become effective. All smoothhound shark landings will be counted against the quota, regardless of gear type.

Comment 25: NMFS received a comment indicating that the proposed action could increase trawl fishing effort and possibly result in increased impacts to essential fish habitat (EFH), the sea floor, and protected resources.

Response: This final rule will establish a retention limit for smoothhound sharks caught incidentally while fishing for other species with trawl gear. NMFS does not expect that trawl fishing effort will change because of this action. Although the vast majority of historical trawl trips that landed smoothhound sharks could still occur under Alternative B2, 11 percent of historically-acceptable trips would likely be precluded. Therefore, any change in trawl fishing that could potentially occur as a result of this final action would tend to be in the direction of decreased fishing effort, due to the implementation of a limit on the amount of smoothhound sharks that can be retained by trawl vessels.

Comment 26: One commenter stated that the smoothhound shark retention limit will lead to regulatory discards and that more research should be performed to determine the proportion of smoothhound sharks that are alive at trawl haulback. This information could be used to develop regulations to require discarding of live individuals while allowing for the retention of dead smoothhound sharks. Another commenter stated that only males should be allowed to be retained and that females should be released to allow for greater reproductive potential in the population.

Response: NMFS agrees that additional research would be helpful to fully characterize the incidental smoothhound shark fishery. Data collected from additional research could provide information regarding trawl gear mortality and smoothhound sex ratios. Once management measures are in place, including permitting, reporting, and observer requirements, NMFS will be able to collect this information and implement additional management measures, if necessary. Currently, however, the available information does not support live-release or sex-specific release requirements.

Comment 27: Allowing trawl fishermen to retain a limited amount of smoothhound sharks is not likely to impact the stock.

Response: NMFS agrees. Although a formal stock assessment has not been performed, catch rates and levels have stayed reasonably consistent over the past 10 years. There is no indication that the smoothhound shark stock cannot support current harvest levels. This final action will not increase trawl fishing effort levels or rates. It implements a management measure that will keep trawl fishing effort approximately at current levels.

Comment 28: Several commenters stated that while the ecological impacts are negligible, the economic benefits could be large for many trawl fishermen.

Response: NMFS does not expect that trawl fishing effort levels or rates will change as a result of this final rule. As such, no new direct, indirect, or cumulative ecological impacts are expected. However, continuing to allow trawl fishermen to retain and sell incidentally-caught smoothhound sharks, rather than prohibiting trawl landings, will maintain some revenue from the species. The allowance to retain and sell a limited number of smoothhound sharks is expected to maintain revenues at levels just below the 10-year average of $68,968 annually across the entire trawl fishery.

Comment 29: One commenter disagreed with the statement in the economic impact analysis that businesses supporting trawl fisheries do not rely on smoothhound shark landings, especially as the statement applies to Ocean City, MD.

Response: Smoothhound sharks are overwhelmingly caught and retained incidentally in Atlantic trawl fisheries while fishing for other species. They are not the primary reason for fishermen to embark on a trawl trip. NMFS is establishing a trawl retention limit that will allow 89 percent of historical trips that landed smoothhound sharks to continue to occur. Because the retention of trawl-caught smoothhound sharks will continue to be allowed at historical levels, businesses supporting trawl trips are not likely to be affected by this rulemaking. If, after the fishery is better characterized through mandatory permitting, reporting, and observer coverage, it is determined that smoothhound sharks caught in trawl gear have a greater indirect economic impact, the economic analyses will be updated.

Comment 30: NMFS received several comments asking how the prohibition on shark finning, the 2010 Shark Conservation Act, and the fins-attached requirement implemented through the final rule for Amendment 3 to the 2006 HMS FMP would impact this rulemaking. Comments ranged from support for a fins-attached requirement in the smoothhound shark fishery, to a modification of the 5-percent fin-to-carcass ratio, to opposition to a fins-attached requirement due to efficiency and meat quality reductions. Additionally, NMFS received suggestions regarding how the 2010

Shark Conservation Act should be implemented in Atlantic trawl fisheries.

Response: The 2010 Shark Conservation Act was signed into law on January 4, 2011. This Act, among other things, prohibits the removal of fins from sharks in the U.S. EEZ. The Act also includes a separate provision addressing the smoothhound shark fishery. NMFS is currently preparing a proposed rule to implement the 2010 Shark Conservation Act and will consider these comments during that rulemaking. This final rule, however, does not address the landing condition of any shark species aboard a vessel or when landed and, therefore, these comments are outside the scope of this rulemaking.

Comment 31: NMFS received a comment requesting that the Agency not move forward with this rule until after the 2010 Shark Conservation Act is implemented.

Response: The 2010 Shark Conservation Act addresses the condition of sharks aboard a vessel or when landed. Under this final rule, NMFS is providing for the limited retention of smoothhound sharks caught incidentally in trawl gear to maintain the historical nature of the trawl fishery and to minimize changes, consistent with the intent of Amendment 3 to the HMS FMP. Thus, the final action in this rule does not address the condition of sharks aboard a vessel or when landed. The 2010 Shark Conservation Act will be implemented in a separate rulemaking and need not be completed first.

Comment 32: Some commenters disagreed with the Draft Finding of No Significant Impact (FONSI) assertion that the action is unlikely to jeopardize the sustainability of any non-target species. The commenters indicated that because this rule could lead to an at-sea processing allowance, enforcement will be complicated and will result in fishermen finning other shark species. The sustainability of other shark species would be in jeopardy due to potential at-sea processing allowances.

Response: The prevention of shark finning is an important objective for NMFS. As noted in the response to Comment 30, NMFS is preparing a proposed rule to implement the 2010 Shark Conservation Act. Within the context of this final rule, the action to establish a retention limit for smoothhound sharks in the Atlantic trawl fisheries is not likely to jeopardize the sustainability of any non-target shark species. This action is not expected to alter trawl fishing effort levels and, therefore, no new impacts to non-target shark species are expected.

Comment 33: NMFS received a comment stating that the Draft FONSI is erroneous because smoothhound shark issues became controversial after the 2010 Shark Conservation Act became law. Therefore, an environmental impact statement (EIS) should have been prepared rather than an environmental assessment (EA).

Response: The Draft FONSI considered 16 criteria in making a determination of no significant impact. Each criterion is relevant to making a determination and has been considered individually, as well as in combination with the others. The significance of this action was analyzed based on the NAO 216–6 criteria and the President's Council on Environmental Quality (CEQ) context and intensity criteria, including the eighth criterion: ''To what degree are the effects on the quality of the human environment expected to be highly controversial?'' NMFS notes that interest in both the swordfish and smoothhound shark portions of the proposed rule was low during previous outreach efforts. NMFS recognizes that the visibility of, and interest in, the smoothhound shark fishery may have increased with passage of the 2010 Shark Conservation Act. However, such increased interest is not enough to make the proposed action controversial, for the purpose of NEPA. The term ''controversial'' does not refer to the mere existence of opposition to, or interest in a proposed action; rather ''controversial'' refers to cases where a substantial dispute exists as to the size, nature, or effect of the major federal action. Such substantial dispute does not exist here. Moreover, as discussed above, any heightened interested in or controversy surrounding the Shark Conservation Act is unrelated to implementing a limited smoothhound retention limit in Atlantic trawl fisheries. As such, controversy resulting from the legislation does not impact NMFS' finding of no significant impact. NMFS has determined that the FONSI was accurate and warranted, per NOAA NEPA guidance, thus an EA is the appropriate level of analysis for the current final rule rather than an EIS.

Comment 34: NMFS received a comment indicating that the rule will have implications for the entire Atlantic and Gulf of Mexico, but the EA only focuses upon the mid-Atlantic region.

Response: The vast majority of trawl trips that catch smoothhound sharks have historically occurred in the mid-Atlantic region. As such, the characterization of the fishery focused upon this area. It is not presently possible for NMFS to speculate what the smoothhound shark trawl fishery may look like in areas where the fishery could expand. If the incidental smoothhound shark trawl fishery begins to expand outside of the mid-Atlantic region, NMFS will conduct additional analyses to characterize that fishery and develop new management measures, if necessary.

Comment 35: NMFS received a comment that, by not authorizing trawl gear, the Agency is attempting to circumvent ESA requirements to prepare a Biological Opinion (BiOp). The commenter stated that if NMFS intends to allow trawl gear to catch smoothhound sharks, the Agency should prepare a new BiOp for the trawl fishery.

Response: NMFS disagrees. BiOps document whether a Federal activity is likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of a species critical habitat. Typically, a BiOp is prepared for each directed fishery and can contain requirements to mitigate or prevent impacts to endangered species or critical habitat. It is not common for a BiOp to be prepared for an incidental fishery because the fishing activities have already been assessed under the directed fishery's BiOp. In the case of smoothhound sharks and trawl gear, the directed trawl fisheries each have BiOps that have assessed the fishing activity and possibly required mitigation measures. For example, when smoothhounds sharks are caught incidentally in trawl gear, they are most often caught in the directed fisheries for *Loligo* squid, summer flounder, scup, croaker, silver hake (whiting), and skate. The *Loligo* squid fishery was analyzed in the 2010 Mackerel Squid and Butterfish BiOp (*http://www.nero.noaa.gov/prot_res/section7/NMFS-signedBOs/SMB%20BIOP%202010.pdf.*) The summer flounder and scup fisheries were analyzed in the 2010 Summer Flounder, Scup, and Black Sea Bass BiOp (*http://www.nero.noaa.gov/prot_res/section7/NMFS-signedBOs/FLS_SCP_BSB%20BIOP%202010.pdf*). The silver hake fishery was analyzed in the 2010 Northeast Multispecies BiOp (*http://www.nero.noaa.gov/prot_res/section7/NMFS-signedBOs/MULTI SPECIES%20BIOP%202010.pdf*). The skate fishery was analyzed in the 2010 Northeast Skate Complex BiOp (*http://www.nero.noaa.gov/prot_res/section7/NMFS-signedBOs/SKATE%20BIOP%202010.pdf*). Since the directed trawl fisheries that incidentally catch smoothhound sharks have already been analyzed under the directed fishery's BiOps, it would be duplicative and unnecessary to reinitiate ESA

consultation for the incidental smoothhound shark trawl fishery.

Changes From the Proposed Rule

Minor changes to the paragraphs at 50 CFR 635.4(f)(1) and 635.4(n) have been made to clarify that the term ''or sold'' in the original paragraphs means ''or from which Atlantic swordfish are sold.''

Classification

The NMFS AA has determined that this final action is necessary for the conservation and management of the HMS fishery, and that it is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the Incidental HMS Squid Trawl provisions because such delay would be contrary to the public interest. Failure to implement this rule immediately would undermine its intent. The squid trawl management measures in this final rule will reduce economic waste by converting incidentally-caught swordfish regulatory dead discards into landings for sale and human consumption, improve data collection, and have no adverse environmental impacts. This rule will grant eligibility for all *Illex* squid moratorium permit holders to be issued a new Incidental HMS Squid Trawl permit that will allow these vessels to retain incidentally-caught swordfish that previously would have been discarded. Based upon observer data, NMFS estimates that this action would allow a total of approximately 172 swordfish per year to be retained that previously had to be discarded assuming that 13 active *Illex* vessels discard 13.2 swordfish per year (or from 1.1–3.3 swordfish/trip). In the unlikely event that all 76 permitted Illex vessels were to become active and retain the maximum allowable amount of swordfish per trip, it is possible that 4,560 or more swordfish could be retained (76 vessels * 4 trips/yr. * 15 swordfish/trip). Because the *Illex* squid trawl fishing season extends only through September of each year, any delay in effectiveness would be contrary to the public interest and against the intention of this rule to reduce regulatory dead discards of swordfish by squid trawl vessels. Finally, there is no hardship placed on the public by making this rule effective immediately. Those fishermen who do not apply for the permit enacted by this rule can continue their current practice of discarding swordfish.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action.

The FRFA analyzed the anticipated economic impacts of the final action and any significant economic impacts on small entities. A summary of the FRFA is below. The full FRFA and analysis of social and economic impacts are available from NMFS (see **ADDRESSES**).

In compliance with section 604(a)(1) of the Regulatory Flexibility Act, the purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act, and the 2006 Consolidated HMS FMP and its amendments, to consider modifications to the permitting requirements for squid trawl vessels to retain incidentally-caught swordfish that would otherwise be discarded dead, and to establish smoothhound shark incidental retention limits for all Atlantic trawl vessels.

Section 604(a)(2) of the Regulatory Flexibility Act requires NMFS to summarize significant issues raised by the public in response to the IRFA, a summary of NMFS' assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was included as part of the draft EA and was summarized in the proposed rule. NMFS did not receive any comments specific to the IRFA; however, NMFS did receive comments related to the overall economic impacts of the proposed rule. Those comments and NMFS' responses to them are mentioned above in the preamble for this rule. In particular, comments 2, 28, and 29 address the rule's economic impacts. There are no substantive changes from the proposed rule as a result of these economic comments.

Section 604(a)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS has determined that all squid trawl vessels that are issued an *Illex* squid moratorium fishing permit, and all trawl vessels that would obtain an open-access smooth dogfish permit when it becomes required in 2012, are small entities under the Small Business Administration (SBA) size standards. All potentially affected vessels either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors (13 CFR 121.201). These are the Small Business Administration (SBA) size standards for defining a ''small'' versus ''large'' business entity in this industry.

The final rule would apply to the 76 current (as of September 2010) *Illex* squid moratorium permit holders, of which 18 are considered ''active'' (*i.e.,* reported landings in 2009). Rhode Island and New Jersey accounted for 99 percent of *Illex* squid landings in 2009. NMFS cannot provide an estimate of the number of trawl vessels that would obtain an open-access permit for smoothhound sharks when they are fully incorporated into the HMS management unit, because the permit is currently not required. However, as a proxy, NMFS based its analysis upon vessels participating in the summer flounder and scup fisheries because these trawl fisheries frequently interact with smoothhound sharks. In 2009, approximately 1,100 vessels were issued either a commercial summer flounder permit or a commercial scup permit, or both, with 798 vessels landing summer flounder in 2000. Rhode Island, New York, New Jersey, Virginia, and North Carolina are the primary states with landings of summer flounder and scup.

Under section 604(a)(4) of the RFA, agencies are required to describe any new reporting, record-keeping, and other compliance requirements. The new Federal permit requirement for an Incidental HMS Squid Trawl permit will allow NMFS to collect data regarding participants in the fishery and swordfish landings through Federal dealer reports. The Federal Incidental HMS Squid Trawl permit requirement will require a similar permit application to the other current HMS permits. The information collected on the application would include vessel information, owner identification and contact information. A modest fee to process the application and an annual renewal fee of approximately $20 may be required in the future.

When developing this action, NMFS considered different ways to reduce the regulatory burden on and provide flexibility to the regulated community, consistent with the recent Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation (January 18, 2011). NMFS currently intends to issue the new Incidental HMS Squid Trawl permit out of its Northeast Regional Permit Office pursuant to this final rule and other

applicable provisions of 50 CFR part 635. NMFS will use similar application procedures as those of the *Illex* squid moratorium permit. Because both permits will be issued from the same office using similar forms, the amount of paperwork and completion time will be reduced. Similarly, NMFS will continue to require squid trawl vessel owners to report their catch and landings in the Northeast Fishing Vessel Trip Report (VTR), rather than requiring a separate HMS logbook. This will avoid duplicative reporting requirements. By utilizing current operational procedures for permit issuance and reporting, the regulatory burden on regulated entities will be reduced.

Under section 604(a)(5), agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. Economic impacts are discussed below and in the Environmental Assessment for the action. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule in a manner consistent with all other legal obligations, NMFS cannot exempt small entities or change the reporting requirements for only small entities. Thus, NMFS did not analyze any alternatives for either issue that fall under the first and fourth categories described above. In addition, NMFS intends to clarify and consolidate all reporting and compliance requirements associated with this final rule, to the extent practicable (category two above). All federally-permitted squid trawl vessels must currently report all of their landings via a NMFS Northeast Region VTR. NMFS intends to continue to utilize this reporting mechanism for all vessels that will be issued an Incidental HMS Squid Trawl permit to report their swordfish landings, although vessels could be selected for additional reporting under this rule if such reporting is determined to be necessary and appropriate. Similarly, the application process for the Incidental HMS Squid Trawl permit will be the same, or similar, to the process used to apply for an *Illex* squid moratorium permit. The only prerequisite for obtaining the new permit will be that the vessel has already been issued a valid *Illex* squid moratorium permit. There are no reporting or compliance requirements associated with establishing a smoothhound shark trawl vessel retention limit that could be consolidated, clarified, or simplified for small entities. Finally, NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act (category three above).

As described below, for this final rule, NMFS considered and analyzed four alternatives to address the retention of incidentally-caught swordfish in squid trawl fisheries (Issue A), and three alternatives to address the retention of incidentally-caught smoothhound sharks in trawl fisheries (Issue B).

The first alternative for Issue A is the no action alternative. This alternative would maintain existing HMS permit requirements and incidental swordfish retention limits in squid trawl fisheries. The second alternative, the final action, will implement a new permit (referred to as the Incidental HMS Squid Trawl permit) for *Illex* squid moratorium permit holders to retain up to 15 swordfish per trip, the current squid trawl limit. The third alternative would exempt *Illex* squid moratorium permit holders from current HMS permit requirements (*i.e.,* the ''HMS permit triple-pack'') and allow them to retain up to 15 swordfish when fishing for squid. Finally, the fourth alternative would establish either a new Incidental HMS Squid Trawl permit available to all vessel owners currently issued a *Loligo* squid moratorium permit, or establish an exemption from the need for *Loligo* squid trawl vessels to be issued the ''HMS permit triple-pack'' to retain swordfish.

The no action alternative (A1) would not result in any additional economic impacts to small entities in the short-term. However, this alternative contributes to a loss of potential income by squid trawl vessels that may occasionally catch a swordfish while it is foraging on squid or in the same physical environment, during normal squid trawl fishing activities. Only five squid trawl vessels out of 180 active *Illex* and *Loligo* squid vessels have been issued the requisite ''HMS permit triple-pack'' needed to retain swordfish. There are 18 active squid trawl vessels that are issued both an *Illex* and *Loligo* permit (*i.e., Illex*/*Loligo* vessels). It is presumed that the five squid trawl vessels issued the necessary HMS permits are also *Illex*/*Loligo* vessels. This means that the vast majority of squid trawl vessels must discard any incidentally-caught swordfish because they do not have the proper LAPs needed to retain them. Most of the swordfish incidentally caught by squid trawl vessels are brought onboard dead, or die soon afterwards; these dead discards constitute unrealized income and economic waste. NMFS estimates that the no-action alternative contributes from $3,849.30–$4,145.40 annually in unrealized income individually for the 13 active *Illex*/*Loligo* squid trawl vessels that are not issued HMS permits. In aggregate, the total amount of unrealized annual income by all 13 active *Illex*/*Loligo* squid trawl vessels is estimated to range from $50,041–$54,007, depending upon the number of small and large active squid trawl vessels. Similarly, the total amount of unrealized annual income by all 162 active *Loligo* squid trawl vessels ranges from $57,562–$76,749, depending upon the number of small and large active *Loligo* squid trawl vessels. Each swordfish discard is estimated to be valued at approximately $296.10. Because the no-action alternative (A1) contributes to regulatory discards of dead swordfish by squid trawl vessels, thereby causing economic waste, and because current permit requirements (*i.e.,* the ''HMS permit triple-pack'') are not well-suited for squid trawl vessels, it was not chosen as the final action.

The chosen alternative, Alternative A2, will implement a new permit (referred to as the Incidental HMS Squid Trawl permit) for *Illex* squid moratorium permit holders to retain up to 15 swordfish per trip, which is the current squid trawl limit. Because Alternative A2 will allow *Illex* squid trawl vessels to retain swordfish caught incidentally during normal squid trawl fishing activities, thereby converting dead swordfish discards into landings, this alternative is expected to provide some minor economic benefits to *Illex* squid trawl vessels. Specifically, this alternative is estimated to provide a moderate increase in annual revenues from between $3,849.30—$4,145.40 annually for each of the 13 active *Illex*/*Loligo* squid trawl vessels that have not been issued HMS permits. In aggregate, Alternative A2 could produce from $50,041—$54,007 annually in additional revenue amongst all 13 active *Illex*/*Loligo* squid trawl vessels. These estimates were calculated using the average number of swordfish discards per tow from NEFSC observer data, and

then extrapolating to determine the average number of swordfish discards per year for active vessels. Also, by implementing a permit requirement, NMFS will obtain important fishery management information, such as the identification of participants in the squid trawl fishery that may occasionally catch swordfish. This information will help in outreach efforts. The Federal Incidental HMS Squid Trawl permit requirement will require a permit application similar to other current HMS permits. The information collected on the application will include vessel information and owner identification and contact information. A modest fee to process the application and an annual renewal fee of approximately $20 may be required in the future. This alternative is selected because it will convert dead swordfish discards into landings, provide minor economic benefits to some small entities, reduce economic waste, provide additional fishery management information, and is not expected to alter current levels of fishing effort or have other adverse ecological consequences, including impacts on protected species, target species, non-target species, and essential fish habitat.

Alternative A3 is estimated to have the same minor positive economic impacts on small entities as Alternative A2. However, there would be no costs or recordkeeping burden to vessel owners associated with obtaining a new HMS permit (approximately $20/year). Rather, Alternative A3 would exempt vessels issued an *Illex* squid moratorium permit from HMS permit requirements and allow them to land up to 15 swordfish caught incidentally while squid trawling. All swordfish landings would have to be reported in the VTR logbook (as currently required), so landings information would be obtained. While this alternative would be less burdensome to industry, it would not help to identify the universe of vessels participating in the *Illex* squid trawl fishery that may be catching swordfish incidentally. It is currently difficult to separate squid trawl vessels from other vessels in landings databases because the required HMS permits are identical to those issued to longline vessels and other HMS vessels. Removing the HMS permitting requirements for *Illex* squid trawl vessels would worsen this situation. Furthermore, it would hamper NMFS's efforts to improve outreach and communications with this small, but important, HMS constituency. Without a new HMS permit, NMFS could be deprived of important information regarding squid trawl vessel swordfish landings and fishery participation. Therefore, Alternative A3 was not selected as the final action because it would not provide additional information for fishery management purposes.

Alternative A4 would implement the same requirements for *Loligo* squid trawl vessels that NMFS selects for *Illex* squid trawl fishermen. This alternative is estimated to provide a moderate increase in annual revenues from between $355.32–$473.76 annually for 162 active *Loligo* squid trawl vessels that are not issued HMS permits (*i.e.,* 180 active *Loligo* vessels minus 18 active *Illex*/*Loligo* vessels). In aggregate, the total amount of additional annual income that could be realized under this alternative by the 162 active *Loligo* squid trawl vessels ranges from $57,562–$76,749, depending upon the number of small and large active *Loligo* squid trawl vessels. This alternative would convert dead swordfish discards into landings and could provide minor economic benefits. However, the incidental catch of swordfish in squid trawls is much higher in the *Illex* squid trawl fishery than in the *Loligo* squid trawl fishery. This is because the *Loligo* fishery operates inshore during summer months whereas the *Illex* fishery operates in the offshore mid-Atlantic canyons during the summer where swordfish are more prevalent. Temporally and spatially, the two fisheries are different. Establishing a new permit or a permit exemption for potentially as many as 289 additional *Loligo* squid trawl vessels is not necessary to reduce dead discards because these vessels individually have very low swordfish discard rates.

For Issue B, under the no-action alternative (B1), when smoothhound sharks are fully incorporated into the HMS management unit in the future, the retention of smoothhound sharks would be prohibited by trawl vessels without the additional regulatory action contained in this rulemaking. Therefore, Alternative B1 would have moderate direct short-term and long-term negative social and economic impacts when smoothhound sharks are fully incorporated into the HMS management unit. Based on VTR data from 2000–2009, an average of 145,088 lbs dw of smoothhound sharks were caught in trawl gear, retained, and likely sold per year. Using an average ex-vessel price of $0.29 for smoothhound shark meat, $2.02 for smoothhound shark fins, and assuming a fin-to-carcass ratio of 12 percent (per the 2010 Shark Conservation Act, Public Law 111–348), total revenues from smoothhound sharks caught in trawl gear averages $68,968 per year. Thus, in aggregate, under Alternative B1, trawl fishermen could collectively lose $68,968 per year across up to 266 vessels. Individually, each vessel could lose approximately $259 annually in revenue under the no-action alternative. This alternative was not selected because prohibiting the retention of incidentally-caught smoothhound sharks by trawl gear would be inconsistent with NMFS's intent in Amendment 3 to minimize changes to the smoothhound fishery by allowing for incidental trawl landings.

Alternative B2, the final action, will allow for the retention of smoothhound sharks caught incidentally in trawl gear, in an amount not to exceed 25 percent of the total catch, by weight. When compared to the no-action alternative, after smoothhound sharks are fully incorporated into the HMS management unit in the future, Alternative B2 will provide moderate direct short-term and long-term positive social and economic impacts. Currently, some trawl fishermen supplement fishing revenue with smoothhound shark products. Under the no-action alternative, when smoothhound sharks are fully incorporated into the HMS management unit, they would no longer be able to do so. Under Alternative B2, however, they will continue to be allowed to retain and sell incidentally-caught smoothhound sharks. Calculating the exact level of revenue that will continue to be earned through smoothhound shark sales by trawl fishermen is difficult due to incomplete reporting and data. However, based upon the average annual total smoothhound shark trawl revenue estimate of $68,968, and the fact that Alternative B2 will continue to allow approximately 89 percent of historical smoothhound trawl trips, fishermen stand to experience moderate positive social and economic impacts compared to Alternative B1 when smoothhound sharks are fully incorporated into the HMS management unit. This alternative was selected as the final action because it maintains 89 percent of historical smoothhound shark trips, but implements a reasonable upper threshold on landings to discourage a directed trawl fishery for smoothhound sharks. This alternative is consistent with NMFS's intent to maintain smoothhound sharks as an incidental catch in trawl fisheries.

Alternative B3 would allow for the retention of smoothhound sharks caught incidentally in trawl gear, in an amount not to exceed 50 percent of the total catch, by weight. When compared to the no-action alternative, Alternative B3 would have moderate direct short-term

and long-term positive social and economic impacts when smoothhound sharks are fully incorporated into the HMS management unit. Currently, some trawl fishermen supplement fishing revenue with smoothhound shark products. Under the no-action alternative, they would no longer be able to do so when smoothhound sharks are fully incorporated into the HMS management unit. Under Alternative B3, however, they would continue to be allowed to retain and sell incidentally-caught smoothhound sharks. Calculating the exact level of revenue that would continue to be earned through smoothhound shark sales by trawl fishermen is difficult due to incomplete reporting and data. However, based upon the average annual total smoothhound shark trawl revenue estimate of $68,968, and the fact that Alternative B3 would continue to allow approximately 97 percent of the historical smoothhound trawl trips, fishermen would experience moderate positive social and economic impacts compared to Alternative B1 when smoothhound sharks are fully incorporated into the HMS management unit. This alternative was not selected because allowing up to 50 percent of a trawl trip to consist of smoothhound sharks would not effectively prevent a directed trawl fishery for smoothhound sharks from occurring. This alternative would not be consistent with NMFS's intent in Amendment 3 to minimize changes to the smoothhound fishery by allowing only for incidental trawl landings.

In summary, Alternative A2 will have minor direct short-term positive economic impacts. It is estimated to allow 13 active *Illex* squid trawl vessels to retain and sell from 13–14 swordfish per vessel per year that they would otherwise be required to discard, assuming that historical fishing effort and discard rates remain constant. In aggregate, Alternative A2 could produce from $50,041–$54,007 annually in additional revenue amongst the 13 active *Illex*/*Loligo* squid trawl vessels. Similarly, Alternative B2 will have minor direct short-term positive economic impacts when smoothhound sharks are fully incorporated into the HMS management unit. Trawl vessels will continue to be allowed to retain and sell incidentally-caught smoothhound sharks. Calculating the exact level of revenue that would continue to be earned through smoothhound shark sales by trawl fishermen is difficult due to incomplete reporting and data. However, based upon the average annual total smoothhound shark trawl revenue estimate of $68,968, and the fact that Alternative B2 will continue to allow approximately 89 percent of historical smoothhound trawl trips to occur, fishermen will experience moderate positive social and economic impacts compared to the no-action alternative when smoothhound sharks are fully incorporated into the HMS management unit.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide for this final rule are available (see **ADDRESSES**).

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0327. The public reporting burden to apply for the Incidental HMS Squid Trawl permit is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to the HMS Management Division (see **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 4, 2011.

Samuel D. Rauch III,

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

For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.4, paragraphs (a)(5), (a)(10), (f)(1), (f)(2), (h)(1) heading, (m)(1), and (m)(2) are revised, and paragraphs (h)(1)(iv) and (n) are added to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(5) *Display upon offloading.* Upon offloading of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit; Atlantic tunas, shark, or swordfish permit; Incidental HMS squid trawl; and/or the shark research permit to the first receiver. The permit(s) must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

* * * * *

(10) *Permit condition.* An owner of a vessel with a valid swordfish, shark, HMS Angling, HMS Charter/Headboat, or Incidental HMS squid trawl permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

* * * * *

(f) * * *

(1) Except as specified in paragraph (n) of this section, the owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained or possessed with an intention to sell or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish

permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section, or those issued under paragraph (n) of this section.

* * * * *

(h) * * *

(1) *Atlantic Tunas, HMS Angling, HMS Charter/Headboat, and Incidental HMS squid trawl vessel permits.*

* * * * *

(iv) An applicant for an incidental HMS squid trawl permit must submit, in addition to all other information specified in § 635.4(h)(1), a copy of a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(i) of this chapter.

* * * * *

(m) * * *

(1) *General.* Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, swordfish, or Incidental HMS squid trawl vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraphs (h)(1)(iv) and (l)(2) of this section; all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5 and § 300.185 of this title; the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section; and the workshop requirements specified in § 635.8 are met.

(2) *Shark and swordfish LAPs.* The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, or that takes or possesses such shark or swordfish as incidental catch, must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, except as specified in paragraph (n) of this section. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures in paragraph (l) of this section.

(n) *Incidental HMS Squid Trawl permits.*—(1) The owner of a vessel in the squid trawl fishery, as described at § 635.24(b)(2), on which Atlantic swordfish are retained, or possessed with an intention to sell, or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, an Incidental HMS squid trawl permit.

(2) An Incidental HMS squid trawl permit is valid only when the vessel has on board a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(i) of this chapter, and no commercial fishing gear other than trawl gear.

■ 3. In § 635.5, paragraph (a)(1) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) *Logbooks.* If an owner of an HMS charter/headboat vessel, an Atlantic tunas vessel, a shark vessel, a swordfish vessel, or a vessel in the squid trawl fishery for which a permit has been issued under § 635.4(b), (d), (e), (f), or (n) is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook form specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the logbook form within 48 hours of completing that day's activities or before offloading, whichever is sooner. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS. If no fishing occurred during a calendar month, a no-fishing form so stating must be submitted postmarked no later than 7 days after the end of that month. If an owner of an HMS charter/headboat vessel, Atlantic tunas vessel, shark vessel, swordfish vessel, or a vessel in the squid trawl fishery permitted under § 635.4(b), (d), (e), (f), or (n) is selected in writing by NMFS to complete the cost-earnings portion of the logbook(s), the owner or operator must maintain and submit the cost-earnings portion of the logbook postmarked no later than 30 days after completing the offloading for each trip fishing for Atlantic HMS during that calendar year, and submit the Atlantic Highly Migratory Species Annual Expenditures form(s) postmarked no later than the date specified on the form of the following year.

* * * * *

■ 4. In § 635.21, paragraphs (e)(3)(i), (e)(4)(i), and (e)(4)(iv) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(e) * * *

(3) * * *

(i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet, except that smoothhound sharks taken incidentally while fishing with trawl gear may be retained by vessels issued a Federal commercial smoothhound permit, subject to the restrictions specified in § 635.24(a)(7). No person issued an HMS Angling permit or an HMS Charter/Headboat permit under § 635.4 may possess a shark if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a Federal Atlantic commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

* * * * *

(4) * * *

(i) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained by a vessel issued a valid Incidental HMS squid trawl permit, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

* * * * *

(iv) Except for persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit or Incidental HMS squid trawl permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish

taken by, any gear other than handline or rod and reel.

* * * * *

■ 5. In § 635.24, paragraphs (a)(7), (b)(1), and (b)(2) are revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(7) Only persons who own or operate a vessel that has been issued a Federal commercial smoothhound permit may retain, possess, and land smoothhound sharks if the smoothhound fishery is open per §§ 635.27 and 635.28. Persons aboard a vessel in a trawl fishery that has been issued a commercial smoothhound permit, and are in compliance with all other applicable regulations, may retain, possess, land, or sell incidentally-caught smoothhound sharks, but only up to an amount that does not exceed 25 percent, by weight, of the total catch on board or offloaded from the vessel. A vessel is considered to be in a trawl fishery when it has no commercial fishing gear other than trawls on board and when smoothhound sharks constitute no more than 25 percent by weight of the total fish on board or offloaded from the vessel.

* * * * *

(b) * * *

(1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, land, or sell no more than 30 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an Incidental HMS squid trawl permit may retain, possess, land, or sell no more than 15 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

■ 6. In § 635.27, paragraph (c)(1)(i)(B) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish or an HMS Angling or Charter/Headboat or Incidental HMS squid trawl permit has been issued, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued, is counted against the incidental catch quota.

* * * * *

■ 7. In § 635.28, the first sentence of paragraph (c)(1)(i)(A) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a pelagic longline, or issued an Incidental HMS squid trawl permit. * * *

* * * * *

■ 8. In § 635.71, and paragraph (d)(18) is added and paragraph (e)(8) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(18) Retain or possess on board a vessel in the trawl fishery smoothhound sharks in an amount that exceeds 25 percent, by weight, of the total fish on board or offloaded from the vessel, as specified at § 635.24(a)(7).

(e) * * *

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline or handgear, except as specified at § 635.21(e)(4)(i).

* * * * *

[FR Doc. 2011–20330 Filed 8–9–11; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 76, No. 154
Wednesday, August 10, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Doc. No. AMS–FV–11–0057; FV11–906–1 PR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2011–12 and subsequent fiscal periods from $0.12 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. The Committee locally administers the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Assessments upon orange and grapefruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 22, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Fax:* (202) 720–8938; or *Internet: http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (956) 632–5330, *Fax:* (956) 632–5358, or *E-mail: Belinda.Garza@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable oranges and grapefruit beginning on August 1, 2011, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2011–12 and subsequent fiscal periods from $0.12 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–05 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 9, 2011, and unanimously recommended 2011–12 expenditures of $1,224,037 and an assessment rate of $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. In comparison, last year's budgeted expenditures were $1,109,037. The proposed assessment rate of $0.14 is $0.02 higher than the rate currently in effect. The Committee recommended a higher assessment rate due to an expected smaller crop and an

increase in budgeted expenses. Budgeted expenses were increased to provide additional funding for the Committee's Mexican fruit fly program, and also to fund a Federal Agriculture Improvement Reform (FAIR) review analysis to be conducted next fiscal period. In 1996, Congress mandated that every five years commodity boards established under the oversight of the Secretary of Agriculture pursuant to a commodity promotion law should fund an independent evaluation of the effectiveness of their generic promotion program, which is now commonly known as a FAIR review.

The Committee projected a reduced crop of 8,750,000 7/10-bushel carton equivalents, which would be 289,137 7/10-bushel carton equivalents less than the 9,039,137 7/10-bushel carton equivalents handled during the 2010–11 fiscal period. Furthermore, due to severe cuts in the State of Texas' budget, the Texas Department of Agriculture requested the citrus industry's assistance in funding a Mexican fruit fly trapping program, which is essential to the industry's well-being. Based on a decreased crop estimate and anticipated expenditure increases, the Committee unanimously recommended that the assessment rate of $0.12 currently in effect be increased by $0.02. Income derived from handler assessments and interest would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2011–12 fiscal period include $479,000 for the Mexican fruit fly support, trapping, and bait spray programs; $425,000 for promotion; and $250,737 for management, administration, and compliance oversight. In comparison, major expenditures for these items in 2010–11 (current fiscal period) were $229,000, $600,000, and $246,737, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenditures by estimated shipments of Texas oranges and grapefruit. As mentioned earlier, orange and grapefruit shipments for the 2011–12 fiscal period are estimated at 8.75 million 7/10-bushel carton equivalents, which should provide $1,225,000 in assessment income. Income generated through the $0.14 assessment rate and interest would be more than sufficient to meet anticipated expenses ($1,224,037). Reserve funds at the end of 2011–12 are projected at $283,774, well below one fiscal period's expenses, which would be within the maximum reserve amount permitted under the order (§ 906.35).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2011–12 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 177 producers of oranges and grapefruit in the production area and approximately 12 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

An updated Texas citrus industry profile shows that 6 of the 12 handlers (50 percent) would be considered large businesses under SBA's definition, and the remaining 6 handlers (50 percent) would be considered small businesses. Of the approximately 177 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000. Thus, half of the handlers and the majority of producers of Texas oranges and grapefruit may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2011–12 and subsequent fiscal periods from $0.12 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit. The Committee unanimously recommended 2011–12 expenditures of $1,224,037 and an assessment rate of $0.14 per 7/10-bushel carton or equivalent handled. The quantity of assessable oranges and grapefruit for the 2011–12 fiscal period is estimated at 8.75 million 7/10-bushel carton equivalents. Thus, the $0.14 assessment rate should provide $1,225,000 in assessment income which would be sufficient to meet anticipated expenses.

The major expenditures recommended by the Committee for the 2011–12 fiscal period include $479,000 for the Mexican Fruit Fly support, trapping, and bait spray programs; $425,000 for promotion; and $250,737 for management, administration, and compliance oversight. Major expenditures for these items in 2010–11 (current fiscal period) were $229,000, $600,000, and $246,737, respectively.

The increased assessment rate recommended by the Committee was due to a reduced crop estimate (8.75 million 7/10-bushel carton equivalents of oranges and grapefruit), and an increase in budgeted expenditures to provide additional funding for the Mexican fruit fly program and a FAIR analysis. With anticipated assessment income of $1,225,000, and anticipated expenditures of $1,224,037, funds in the reserve would be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

In arriving at its recommended budget, the Committee considered alternative expenditure levels based upon the relative need of the Mexican fruit fly trapping and promotion programs to the Texas citrus industry. The assessment rate of $0.14 per 7/10-bushel carton equivalent was then determined by dividing the total recommended budget by the quantity of assessable oranges and grapefruit, estimated at 8.75 million 7/10-bushel carton equivalents for the 2011–12 fiscal period. Considering assessment revenue and interest, total revenue would be approximately $2,463 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information from recent seasons (2008–2010) and preliminary information pertaining to the upcoming fiscal period indicates that the season average packinghouse door price for the 2011–12 fiscal period could likely range from $6.24 to $8.23 per 7/10-bushel carton equivalent of Texas oranges, and from $10.90 to $15.55 for Texas grapefruit. Therefore, the estimated assessment revenue for the 2011–12 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 1.7 and 2.2 percent for oranges and between 0.9 and 1.3 percent for grapefruit.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 9, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 (Generic Fruit Crops—Mandatory). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

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

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2011–12 fiscal period begins on August 1, 2011, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is proposed to be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 2011, an assessment rate of $0.14 per 7/10-bushel carton or equivalent is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: August 3, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–20120 Filed 8–9–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0625; Airspace Docket No. 11–AEA–16]

Proposed Amendment of Class D and E Airspace; North Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and Class E airspace at Northeast Philadelphia Airport, North Philadelphia, PA, due to the closing of Willow Grove Naval Air Station and Warminster NAWC. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations in the North Philadelphia, PA airspace area.

DATES: Comments must be received on or before September 26, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New JerseyAvenue, SE., Washington, DC 20590–0001; *Telephone*: 1–800–647–5527; *Fax*: 202–493–2251. You must identify the Docket Number FAA–2011–0625; Airspace Docket No. 11–AEA–16, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: John Fornito, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization, Federal

Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Those wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0625; Airspace Docket No. 11–AEA–16.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class D and E airspace at Northeast Philadelphia Airport, North Philadelphia, PA. Class D and Class E airspace designated as surface area would be reconfigured due to the closing of Willow Grove Naval Air Station and Warminster NAWC.

Class D and Class E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it proposes to amend Class D and E airspace in the North Philadelphia, PA area.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

1. The authority citation for Part 71 will continue to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

AEA PA D North Philadelphia, PA [Amended]

Northeast Philadelphia Airport, Philadelphia, PA

(Lat. 40°04′55″; N long. 75°00′39″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.6-mile radius of the Northeast Philadelphia Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AEA PA E2 North Philadelphia, PA [Amended]

Northeast Philadelphia Airport, Philadelphia, PA

(Lat. 40°04′55″ N., long. 75°00′39″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5-mile radius of the Northeast Philadelphia Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously purblished in the Airport/Facility Directory.

Issued in College Park, Georgia, on August 1, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–20305 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0250; Airspace Docket No. 11–AGL–6]

Proposed Amendment of Class E Airspace; South Bend, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace in the South Bend, IN area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Jerry Tyler Memorial Airport, Niles, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. The geographic coordinates for South Bend Regional Airport also would be adjusted.

DATES: 0901 UTC. Comments must be received on or before September 26, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0250/Airspace Docket No. 11–AGL–6, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0250/Airspace Docket No. 11–AGL–6.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Jerry Tyler Memorial Airport, Niles, IN. Controlled airspace is needed for the safety and management of IFR operations at the airport. The geographic coordinates for South Bend Regional Airport would also be updated to coincide with the FAA's aeronautical database.

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace in the South Bend, IN area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AGL IN E5 South Bend, IN [Amended]

South Bend, South Bend Regional Airport, IN
(Lat. 41°42′30″ N., long. 86°19′02″ W.)
Niles, Jerry Tyler Memorial Airport, IN
(Lat. 41°50′09″ N., long. 86°13′31″ W.)
Gipper VORTAC
(Lat. 41°46′07″ N., long. 86°19′06″ W.)
South Bend ILS Localizer
(Lat. 41°42′15″ N., long. 86°19′59″ W.)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of South Bend Regional Airport, and within 4.4 miles south and 7 miles north of the South Bend ILS Localizer East Course, extending from South Bend Regional Airport to 10.5 miles east of the ILS outer marker, and within 4.4 miles west and 7 miles east of the Gipper VORTAC 001° radial extending from the South Bend Regional Airport to 10.5 miles north of the VORTAC, and within a 6.4-mile radius of Jerry Tyler Memorial Airport, and within 4 miles northwest and 8 miles southeast of the Gipper VORTAC 226° radial extending from the 6.4-mile radius of Jerry Tyler Memorial Airport to 15.4 miles southwest of the airport.

Issued in Fort Worth, TX, on August 2, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–20307 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0759 Airspace Docket No. 11–AAL–12]

Proposed Amendment of Class E Airspace; Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Nuiqsut AK. The amendment of two standard instrument approach procedures at the Nuiqsut Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before September 26, 2011.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0759/ Airspace Docket No. 11–AAL–12 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Martha.ctr.Dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0759/Airspace Docket No. 11–AAL–12.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E5 airspace at the Nuiqsut Airport in Nuiqsut, AK, to accommodate the revision of two standard instrument approach procedures at the Nuiqsut Airport. This Class E airspace would provide adequate controlled airspace upward from the 700 feet and 1,200 feet above the surface, for the safety and management of IFR operations at the Nuiqsut Airport.

Class E5 airspace designated as 700 and 1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9U, Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The airspaces listed in this

document would be subsequently published in that Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at the Nuiqsut Airport, Nuiqsut, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

AAL AK E5 Nuiqsut, AK [Revised]

Nuiqsut Airport, AK
(Lat. 70°12′35″ N., long. 151°00′23″ W).

That airspace extending upward from 700 feet above the surface within an 6.4-mile radius of the Nuiqsut Airport, AK and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Nuiqsut Airport, AK.

Issued in Anchorage, AK, on July 26, 2011.

Michael A. Tarr

Manager, Alaska Flight Services.

[FR Doc. 2011–20254 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0750 Airspace Docket No. 11–AAL–08]

Proposed Amendment of Class E Airspace; Umiat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Umiat, AK. The cancellation of two special Instrument Approach Procedures at Umiat Airport has made the 700 ft transition area no longer necessary.

DATES: Comments must be received on or before September 26, 2011.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0750/Airspace Docket No. 11–AAL–08 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; *fax:* (907) 271–2850; *e-mail: Martha.ctr.Dunn@faa.gov. Internet address: http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0750/Airspace Docket No. 11–AAL–08.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at the Umiat Airport, in Umiat, AK, by eliminating the 700 ft. transition area. The cancellation of two special instrument approach procedures makes the 700 ft. transition area no longer necessary.

Class E airspace areas designated as 700 and 1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9U, Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The airspace listed in this document would be subsequently published in that Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at the Umiat Airport, Umiat, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Umiat, AK [Revised]

Umiat Airport, AK

(Lat. 69°22′16″ N., long. 152°08′06″ W.)

That airspace extending upward from 1,200 feet above the surface with a 73-mile radius of the Umiat Airport, Alaska.

* * * * *

Issued in Anchorage, AK, on July 26, 2011.

Michael A. Tarr,

Manager, Alaska Flight Services .

[FR Doc. 2011–20260 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0757 Airspace Docket No. 11–AAL–10]

Proposed Establishment of Class E Airspace; Tatitlek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Tatitlek, AK. The creation of a standard instrument approach procedure at the Tatitlek Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before September 26, 2011.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0757/Airspace Docket No. 11–AAL–10 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail:

Martha.ctr.Dunn@faa.gov. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–00757/Airspace Docket No. 11–AAL–10.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E5 airspace at the Tatitlek Airport in Tatitlek, AK, to accommodate the creation of the RNAV (GPS) Runway 31 standard instrument approach procedure at the Tatitlek Airport. This Class E airspace would provide adequate controlled airspace upward from 700 feet and 1,200 feet above the surface, for the safety and management of IFR operations at the Tatitlek Airport.

Class E airspace designated as 700 and 1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9U, Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The airspaces listed in this document would be subsequently published in that Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at the Tatitlek Airport, Tatitlek, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Tatitlek, AK [Added]

Tatitlek Airport, AK
(Lat. 60°52′21″ N., long. 146°41′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Tatitlek Airport, AK and within 2 miles southwest and 3.4 miles northeast of the 149 radial from the Tatitlek Airport, AK extending from the 6.4—mile radius to 11.8 miles southeast of the Tatitlek Airport, AK, and that airspace extending upward from 1,200 feet above the surface within a 60-mile radius of the Tatitlek Airport, AK.

Issued in Anchorage, AK, on July 26, 2011.

Michael A. Tarr,

Manager, Alaska Flight Services.

[FR Doc. 2011–20258 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0707; Airspace Docket No. 11–AEA–17]

Proposed Establishment of Class E Airspace; Palmyra, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Palmyra, PA, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Reigle Field. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before September 26, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2011–0707; Airspace Docket No. 11–AEA–17, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0707; Airspace Docket No. 11–ASO–17) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0707; Airspace Docket No. 11–ASO–17.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Palmyra, PA, providing the controlled airspace required to support the new RNAV GPS standard instrument approach procedures for Reigle Field. Controlled airspace extending upward from 700 feet above the surface would be established for the safety and management of IFR operations at the airport.

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This proposed rulemaking is promulgated under the authority described in subtitle VII, part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Reigle Field, Palmyra, PA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Palmyra, PA [New]

Reigle Field, PA
(Lat. 40°17′15″ N., long. 76°34′39″ W.)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of Reigle Field.

Issued in College Park, Georgia, on August 1, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–20302 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0448; FRL–9450–2]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Rules Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take several actions on a revision to the Minnesota State Implementation Plan (SIP) which updates Minnesota's rules in the SIP. The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision to EPA on May 5, 2008. EPA is proposing to approve the majority of MPCA's submittal, which will result in consistent enforceability of rules at the state and Federal levels. EPA is proposing to defer action on two sections of Minnesota's rules related to the state's operating permit program. Finally, EPA is proposing to disapprove the state's request to remove the Minneapolis/St. Paul vehicle inspection and maintenance program from the Minnesota SIP. These actions are approvable because they are consistent with the Clean Air Act (CAA) and EPA regulations.

DATES: Comments must be received on or before September 9, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0448, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Final Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: July 29, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–20208 Filed 8–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0588; FRL9450–5]

Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Smoke, Opacity and Sulfur Dioxide Rule Revisions; Regulation 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove revisions to Colorado's Regulation 1 adopted by the State of Colorado on July 21, 2005 and submitted to EPA on August 8, 2006. The revisions involve the use of obscurants during military exercises while maintaining air quality, averaged emission rate determination over time and recordkeeping requirements. Colorado's Regulation 1 governs opacity, particulate, sulfur dioxide (SO_2), and carbon monoxide (CO) emissions from sources. EPA has determined that most of the revisions in Colorado's submittal are consistent with the Clean Air Act (CAA) and should be approved, but a revision to a provision governing fuel burning equipment is not and should be disapproved.

DATES: Comments must be received on or before September 9, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0588 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: komp.mark@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER**

INFORMATION CONTACT if you are faxing comments).

• *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2011–0588. 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 instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Komp, Air Program, 1595 Wynkoop Street, *Mailcode:* 8P–AR, Denver, Colorado 80202–1129, (303) 312–6022, *komp.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or Colorado mean the State of Colorado, unless the context indicates otherwise.

(v) The initials *NSR* mean or refer to New Source Review, the initials *PSD* mean or refer to Prevention of Significant Deterioration and the initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(vi) The initials *CO* mean Carbon Monoxide, NO_2 mean Nitrogen Dioxide and SO_2 mean Sulfur Dioxide.

(vii) The initials *BACT* mean Best Available Control Technology.

(viii) The word *Base* means United States Army Fort Carson Military Base and the word *PCMS* means Pinon Canyon Maneuver Site.

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://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:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Purpose of This Action

EPA is proposing to partially approve and partially disapprove revisions to Colorado's Regulation 1 adopted by the State of Colorado on July 21, 2005 and submitted to EPA on August 8, 2006. The revisions involve the deletion of obsolete, adoption of new, and clarification of ambiguous provisions. Colorado's Regulation 1 governs opacity, and particulate, SO2, and CO emissions from sources. EPA has determined that most of the revisions in Colorado's submittal are consistent with the CAA and should be approved, but a revision to a provision governing fuel burning equipment is not and should be disapproved.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal

rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Background of State's Submittals

The State's August 8, 2006 submittal consisted of one revision to the State's Regulation 1. The revision was adopted by the State on July 21, 2005 and revises regulations regarding the use of smoke during military operations, equipment requirements and work practices (abatement and control measures intended to control the emissions of particulates), smokes and SO_2 from new and existing stationary sources.

It also provides a new numbering scheme for each section of the regulation. The revisions to Regulation 1 are described for each section where a revision was made within Regulation 1.

Introduction

The State revised the numbering of Regulation 1. Previously, subsections were designated only by the letter or number (for example, A or 1) assigned to that subsection. In the revision, every subsection is designated by full reference to it (for example, III.A or III.A.1).

The State adopted EPA test method 9 (40 CFR Part 60, Appendix A–4) as it is applied to Standards of Performance for Steel Plants (40 CFR 60.275a).

Section I. Applicability of: Referenced Federal Regulations

Section I.A. provides that Regulation 1 provisions are applicable statewide. An exception is made if a provision within Regulation 1 is made specifically applicable to attainment, attainment/maintenance or nonattainment areas. Consistent with its use of the term elsewhere, the State added the attainment/maintenance nomenclature as a revision to Section I.A.

Section II. Smoke and Opacity

Section II.A.1 provides that no owner or operator of a source shall allow or cause emissions to be released into the atmosphere of any air pollutant in excess of 20 percent opacity. Sources are to use EPA Test Method 9 to determine opacity but the State added language to the section stating that the use of the test method shall not preclude the use of other credible evidence. Section II.A.3 was revised to clarify that the emission limit on pilot plants and experimental operations is taken over a sixty minute time period.

The submittal indicated that revisions were made to Section II.C. regarding the State's Open Burning regulation. However, upon review of the revisions the language appears to be unchanged from a previous revision the State had made to its Open Burning regulations under the Smoke and Opacity section of Regulation 1. EPA approved this revision in an earlier action (76 FR 4540, Jan. 26, 2011).

The State revised Regulation 1 to address the United States Army Fort Carson Military Base's (Base) need to use military smoke or obscurants (both which will be referred to as obscurants in this proposed action) during training.

As background information prior to the revision, Section II.A of Regulation 1 set general standards prohibiting emissions into the atmosphere of any air pollutant which is in excess of 20% opacity. In recognition that obscurant generation in training by the United States Army purposefully intends to be at or near 100 percent opacity, the State added provisions for obscurant generation in 1998. Section II.D set specific limitations for the use of obscurants at the Base and the Pinón Canyon Maneuver Site (PCMS) at 100 percent opacity subject to specified limitations and conditions.

The revisions to Section II.D in the August 8, 2006 submission include the replacement of the specific reference to fog oil with a general reference to obscurants allowing the Army the use of other materials to generate obscurants. The revision removed the daily limitation to the use of obscurants, and replaces a three-kilometer buffer zone where obscurants could not be generated with a prohibition on transport of visible emissions from obscurants outside the boundaries of the facilities.

Other revisions to Section II.D added the measures to protect air quality beyond the Base and PCMS' boundary that must be executed before and during obscurant training. These measures included analyzing meteorological conditions before training with obscurants begins to ensure that atmospheric conditions meet established criteria for the dispersion of the obscurants. The revisions specify precluding obscurant training if unsatisfactory atmospheric dispersion conditions exist and stopping such training if atmospheric dispersion conditions deteriorate. Base and PCMS personnel are to be posted as observers on the obscurant training and are trained to anticipate the probability of obscurants drifting across the Base and PCMS boundaries. These personnel will have the authority to cease operations. The Base and PCMS commanders shall be responsible for compliance with the stipulations of Section II.D.

Section III. Particulate Matter

Prior to its revision, Section III.A.1.d stated that if two or more fuel burning units connect to any opening, the maximum allowable emission rate shall be calculated on a pound per million heat input (BTU) basis. The State revised this so that the maximum allowable emission rate shall be calculated on a lb/hour basis. In our July 5, 2005 letter, we expressed that it was unclear why the regulation was changed. We suggested to the State that a testing protocol be developed to determine compliance with the revised emission rate.

A revision to Section III.B.2.a of Regulation 1 changed the areas where an incinerator emission standard applies. Previously, the emission rate limitation of 0.10 grain of particulate matter per standard cubic foot applied only to incinerators located in nonattainment areas. The revision, consistent with changes elsewhere, expanded the applicability to include incinerators located in attainment/maintenance areas as well.

Finally, the August 8, 2006 submittal changed Section III.C.1.a. regarding manufacturing processes emission rates, to clarify that the applicability of the section is to process equipment with a design rate of 30 tons per hour or less.

Section IV. Continuous Emission Monitoring Requirements for New and Existing Sources

Fluidized bed catalytic units at petroleum refineries located in nonattainment areas are required to install, calibrate, maintain and operate continuous emission monitoring systems for the measurement of CO. This requirement was expanded, consistent with changes elsewhere, to include the same types of units located in attainment/maintenance areas.

Section VI. Sulfur Dioxide Emission Regulations

Averaging times for existing sources of SO_2 unless specified in other sections of Regulation 1 shall be a three hour rolling average (Section VI.A.1). Prior to the revision only sources utilizing a CEM were subject to the 3 hour rolling average. Requirements regarding frequency of fuel sampling were eliminated from this section. Recordkeeping and reporting requirements were modified in Section VI.A.5 to allow the State to require a longer period than the two years for keeping records on site. Previously, Section IV.H of Regulation 1 required only a two year limit to keeping records. The revision to Section VI.A.5 and

Section VI.B.7 acknowledge that other applicable regulations could require longer periods for recordkeeping without conflicting with the two year recordkeeping period specified in Section IV.H.

In Section VI.A.3.f, the State eliminated a reference to new sources submitting an averaging plan, as the section refers only to existing sources.

Previously, the State had proposed an increase in the emission limit for petroleum refining and refineries processing 1,000 or more barrels per day of oil (Sections VI.B.4.e and VI.B.4.g.(ii)). The existing emission limit of 0.3 lbs per barrel of oil processed per day was revised to 0.7 lbs per barrel per day. EPA disapproved the relaxation of these limits in a previous action (76 FR 4540, Jan. 26, 2011). In the August 8, 2006 submittal, the State reinstated the language that existed in the SIP prior to the previous proposed revision.

The State added Section VI.B.4.i to Regulation 1 that addressed emission limitations for new cement manufacturing sources. The emission limitation reflects verbatim the emission limitations for existing cement manufacturing found within Section VI.A.3.f with the exception that new sources must submit an emission limit averaging plan with their construction permit application. Revisions to section VI.B.4.i regarding cement manufacturing incorporated the revised averaging times found in section VI.A.3.f and stated that records showing compliance with the emission standard specified in Section VI.A.3.f are to be maintained by the owner for a period of two or five years dependent upon the conditions stated in the source's operating permit.

The State reinstated Section VI.B.5, which specifies that new sources of SO_2, not specifically regulated in other sections of Regulation 1 are limited in their emissions to no more than two tons per day of SO_2 or must utilize Best Available Control Technology (BACT) as determined by the State. EPA previously disapproved the removal of Section VI.B.5 (76 FR 4540, Jan. 26, 2011).

Section VIII. Restrictions on Use of Oil as a Backup Fuel

In Section VIII.A., Applicability, the reference to the U.S. Department of Energy, Rocky Flats Environmental Technology Site and Gates Rubber Company as sources using oil as a backup fuel is deleted since the sources no longer operate in the Denver, Colorado metropolitan area.

Section IX. Emission Regulations Concerning Areas Which Are Nonattainment for Carbon Monoxide

The State added the attainment/maintenance nomenclature as a revision to Section IX. Prior to the revision, refinery fluidized bed catalytic cracking units emitting annually 1,000 or more tons of CO located in nonattainment areas were subject to an emission limitation of 500 parts per million by volume of CO averaged over a one hour period. The State revised this provision to include cracking units in attainment/maintenance units.

IV. EPA Analysis of State's Submittals

We have evaluated Colorado's August 8, 2006 submittal regarding revisions to the State's Regulation 1. EPA had corresponded to the State regarding the State's proposed revisions prior to their State adoption on July 21, 2005. In our letters dated March 19, 2001 and August 8, 2001 to the Colorado Air Quality Control Commission and Colorado Department of Public Health and Environment, we expressed our concern regarding a number of issues we are proposing action on today.

Military Exercises Using Smoke at Fort Carson Facilities

In our March 19, 2001 letter, we expressed concern that the elimination of the three kilometer buffer smoke between where smoke could be released and the military property boundary would not be sufficient to provide assurance that the smoke would not drift over the military boundary and impact public health. The State and United States Army alleviated our concerns when both parties agreed to a number of additional measures to prevent obscurants from crossing the boundary. These included assessing atmospheric dispersion conditions prior to the use of the obscurants, the posting of observers, developing procedures beforehand for the use of obscurants and placing authority to terminate the use of obscurants in the hands of military personnel directly involved in the military exercise where the obscurant is being used.

We do not consider the elimination of the three kilometer buffer zone a relaxation of previous SIP conditions since the buffer zone provision was replaced with new provisions that, at a minimum, compensate for the removal of previous conditions. We are proposing approval of the revision.

Fuel Burning Units

Prior to its revision, Section III.A.1.d stated that if two or more fuel burning units connect to any opening, the maximum allowable emission rate shall be calculated on a pound per million heat input (BTU) basis. The State revised this so that the maximum allowable emission rate shall be calculated on a lb per hour basis. In our July 5, 2005 letter, we expressed that it was unclear why the regulation was changed. We suggested to the State that a testing protocol be developed to determine compliance with the revised emission rate. The State did not develop a testing protocol to determine compliance, and did not explain the basis for the change. It is unclear how the change is consistent with the emissions limits provided for individual fuel burning units, which are expressed in lbs per million BTU, and whether the change constitutes a relaxation of the provision. Given the lack of a testing protocol for compliance, the apparent inconsistency with the limits for individual fuel burning units, and the possible relaxation of the provision, EPA proposes to disapprove the revision to Section III.A.1.d.

Process Design, Averaging Times, and Recordkeeping Requirements

The State revised Section III.C.1.a to clarify the applicability of provisions to manufacturing process equipment. We propose to approve this revision, which confirms the State's existing practice. However, we note that the submittal does not show the same change to Section III.C.1.b, in which the reference to process weight remains. The State should revise III.C.1.b correspondingly.

EPA noted in our August 8, 2001 letter that the averaging time for all SO_2 emissions standards should be a three hour rolling average. EPA reasoned that section VI.A applies to different types of sources with varying sulfur in fuel content. A 24 hour sampling period is too long to assess the amount of SO_2 being emitted when the sulfur in fuel can vary over shorter periods. The State expanded the applicability of the default averaging period, a three hour rolling average, in section VI.A.1. EPA proposes approval of this revision.

The State also revised the recordkeeping provisions to require records be retained for a longer period than two years if other applicable regulations require it. We are approving the State's clarification of the recordkeeping requirements.

SO_2 Emission Rates for Petroleum Refining and New Sources

The State had proposed a SO_2 emission limit relaxation in Sections VI.B.4.e and g pertaining, respectively, to petroleum refineries and to shale oil refineries that process 1,000 or more

barrels of oil per day. We had expressed concern in our August 8, 2001 letter to the State telling the State that we viewed this as a relaxation to the SIP. Section 110(l) of the Clean Air Act (CAA) provides that we cannot approve a revision to a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. The State was asked to submit an analysis indicating whether the relaxation would interfere with the SO_2 National Ambient Air Quality Standard (NAAQS) or the SO_2 increments.

The State responded to EPA's concern by attempting to model compliance with the NAAQS using the proposed SO_2 emission limits of 0.7 lbs per barrel of oil processed per day. In the State's July 21, 2005 Statement of Basis that accompanied the August 8, 2006 submittal, the State said that modeling with the revised emission limitations resulted in violations of the NAAQS. The State decided that the previous emission limitation of 0.3 lbs per barrel of oil processed per day should be reinstated to protect the NAAQS, because the modeling did not support the relaxation of the standard. EPA proposes to approve the reinstatement of the previous limits in Sections VI.B.4.e and g.

The State did add requirements in Section VI.B.5 that new sources not regulated elsewhere in Regulation 1 for SO_2 emissions would be limited to not more than two tons of SO2 per day or be required to utilize BACT. In a previous submission, the State had deleted Section VI.B.5. EPA disapproved that submission (76 FR 4540). The August 8, 2006 submission restores the language that existed (and continues to exist) in the SIP and therefore makes no change (other than renumbering) to the provisions. EPA therefore proposes to approve this submission.

Renumbering and Deletion of Former Sources

The renumbering of the sections does not modify any substantive provision of the SIP. EPA therefore proposes to approve it. However, EPA does not view the renumbering as resubmitting provisions that have already been approved for inclusion into the SIP, or that previously have been disapproved, but were not modified in any way other than renumbering. In particular, EPA's proposed approval of the renumbering does not constitute approval of existing director's discretion provisions that were not substantively modified in this submission, or of director's discretion provisions that were previously disapproved and that were not substantively modified in this submission (see, for example, 76 FR 4540, Jan. 26, 2011).

In Section VIII.A., Applicability, the reference to the U.S. Department of Energy, Rocky Flats Environmental Technology Site and Gates Rubber Company as sources using oil as a backup fuel was deleted since the sources no longer operate in the Denver, Colorado metropolitan area. EPA is proposing to approve the deleted reference to these sources.

V. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. The Colorado SIP revisions that are proposed for approval in this action do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. For the most part, the revisions do not make substantive changes that relax the stringency of the Colorado SIP. As discussed above, the substantive changes to the provisions for the use of military obscurants, taken as a whole, provide at least equivalent stringency to the existing provisions. Therefore, the portions of the revisions proposed for approval satisfy section 110(l) requirements.

VI. Proposed Action

We are not acting on purported revisions made to Section II.C. regarding the State's Open Burning regulation. Upon review of the revisions, the language was unchanged from a previous revision the State had made to its Open Burning regulations under the Smoke and Opacity section of Regulation 1. EPA approved this revision in an earlier action (76 FR 4540, January 26, 2011). EPA therefore considers that no revision was submitted for Section II.C.

What EPA Is Proposing To Approve

We are proposing approving the new numbering scheme for Regulation 1. As discussed above, this proposed approval does not constitute approval of any renumbered provisions that were not substantively modified. We propose to approve the State's incorporation by reference into the SIP of EPA test method 9.

We are also proposing for approval the use of obscurants by the United States Army for military exercises at Fort Carson and PCMS under the prescribed conditions stated in Section II.D. The use of design rates for determining allowable emissions rates for manufacturing processes as defined in Section III.C.1.a of Regulation 1 is proposed for approval.

The revision to the default averaging time for existing sources of SO_2 (Section VI.A.1) is proposed for approval. The modification to recordkeeping and reporting requirements in Section VI.A.5 is also proposed for approval. The reinstatement of Section VI.B.5, requirements for new sources of SO_2 emissions not regulated elsewhere in Regulation 1, is proposed for approval.

EPA proposes to approve the deletion of the Rocky Flats Environmental Technology Site and the Gates Rubber Company in Section VIII.A. Minor grammatical revisions made throughout the revisions are also being proposed for approval. The State's use of the term ''attainment/maintenance'' area in Sections I.A., III.B.2.a, IV.D.2, and IX is proposed for approval.

What EPA Is Disapproving

EPA is proposing to disapprove the revision to Section III.A.1.d regarding the maximum allowable emission rate for multiple fuel units.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 28, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–20282 Filed 8–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2008–0168; FRL–8882–8]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before August 25, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0168 and the pesticide petition number (PP7F7260), 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–2008–0168 and the pesticide petition number (PP7F7260). 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: Julie Chao, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8735; *e-mail address: chao.julie@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.

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. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed 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 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

PP 7F7260. BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide metaflumizone, in or on the raw agricultural commodities grape at 0.04 parts per million (ppm); crop group 10, citrus fruits group at 0.04 ppm; crop group 14, tree nuts group at 0.04 ppm; and almond hulls at 0.04 ppm. The BASF Analytical Method No. 531/0 was developed to determine residues of metaflumizone and its metabolites M320I04, and M320I23, the residues of concern in plants, and in crop matrices. In this method, residues of metaflumizone are extracted from plant matrices with methanol/water (70:30; v/v) and then partitioned into dichloromethane. For oily matrices, the residues are extracted with a mixture of isohexane/acetonitrile (1:1; v/v). The final determination of metaflumizone and its metabolites is performed by liquid chromatography with tandem mass spectrometry (LC/MS/MS).

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–19907 Filed 8–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2000–0003; FRL–9450–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the International Smelting and Refining Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8, is issuing a Notice of Intent to Delete the International Smelting and Refining Superfund Site (Site) located in Tooele,

Utah from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Utah, through the Utah Department of Environmental Quality (UDEQ), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by September 9, 2011.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2000–0003, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *E-mail: waterman.erna@epa.gov*.
- *Fax:* 303 312–7151.
- *Mail:* Erna Waterman, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, EPR–SR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 8, EPR–SR, 1595 Wynkoop. Denver, CO. 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–SFUND–2000–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA, Region 8, Records Center, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6473 Hours: M–F 8 a.m. to 4 p.m.

Tooele City Library, 128 West Vine Street, Tooele, Utah 84074, (435) 882–2182.

FOR FURTHER INFORMATION CONTACT: Erna Waterman, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 8EPR–SR, 1595 Wynkoop Street, Denver, CO 08202–1129, (303) 312–6762 *e-mail: Waterman.Erna@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of International Smelting and Refining Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 8, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–20292 Filed 8–9–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1

RIN 1250–AA03

Non-Discrimination in Compensation; Compensation Data Collection Tool

AGENCY: Office of Federal Contract Compliance Programs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is issuing this Advance Notice of Proposed Rulemaking in order to invite the public to provide input on the development and implementation of a compensation data collection tool. Possible uses for the collected data include generating insight into potential problems of compensation discrimination at the establishment level that warrant further review or evaluation by OFCCP or contractor self-audit. OFCCP could use the data collected by the tool to conduct analyses at the establishment level, as well as to identify and analyze industry trends, Federal contractors' compensation practices and potential equal employment-related issues.

OFCCP is issuing this Advanced Notice of Proposed Rulemaking to solicit comments from interested parties as early as possible in the development process of this new data collection tool. There will, of course, be an additional opportunity to comment following the

publication of the Notice of Proposed Rulemaking. However, to maximize the opportunity to participate in the rulemaking process, OFCCP strongly encourages all interested parties to take this opportunity to submit any ideas, comments or concerns which OFCCP should consider in the course of designing this compensation data collection tool. OFCCP is especially interested in the nature of data that would be most useful for analysis, and any practical implementation issues.

DATES: All comments must be received on or before October 11, 2011.

ADDRESSES: You may submit comments, identified by RIN number 1250–AA03, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail and Hand delivery/Courier:* Debra A. Carr, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210.

Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning OFCCP at (202) 693–0103 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers).

All comments received, including any personal information provided, will be available online at *http://www.regulations.gov* and for public inspection during normal business hours at Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. People who require assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Advance Notice of Proposed Rulemaking will be made available in the following formats: Large print, Braille, electronic file or computer disk, and audiotape. To schedule an appointment to review the comments or this Advance Notice of Proposed Rulemaking in an alternate format, contact OFCCP at the telephone numbers or address listed above.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room C–3325, Washington, DC 20210. *Telephone:* (202) 693–0103 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION: The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP or Agency) enforces Executive Order 11246 (Executive Order) which requires Federal Government contractors and subcontractors to provide equal employment opportunity through affirmative action and nondiscrimination based on race, color, national origin, religion, and sex.[1] Compensation discrimination is one form of discrimination prohibited by the Executive Order.

Identifying and remedying compensation discrimination remains an important part of OFCCP's compliance efforts. In 2000, concerns about compensation discrimination led OFCCP to require contractors to proactively conduct in-depth analyses of their compensation systems to ensure that those systems were not discriminatory.[2] That same year, OFCCP began requiring contractors to submit compensation data requested in the scheduling letter at the outset of a compliance evaluation to permit the agency to evaluate compensation practices as a matter of course in reviews.

In 2000, OFCCP also initiated a reporting requirement, the Equal Opportunity Survey (EO Survey), which required a subset of contractors to submit information to OFCCP independent of OFCCP compliance evaluations. 65 FR 68022, 68046 (November 13, 2000). The EO Survey required contractors to submit information about personnel activities, compensation and tenure, and certain information about the contractor's affirmative action program. The EO Survey had three major objectives:

(1) To increase compliance with equal opportunity requirements by improving contractor self-awareness and encouraging self-evaluations;

(2) To improve the deployment of scarce federal government resources to those contractors that were most likely to be out of compliance;

(3) To increase agency efficiency by building on the tiered-review process already accomplished by OFCCP's regulatory reform efforts, resulting in better resource allocation.

65 FR 68039.

From its inception, OFCCP was concerned about verifying the utility and efficiency of the EO Survey. The development of the EO Survey began in March 1998, with initial field testing beginning in August 1999. In April 2000, a pilot EO Survey was sent to approximately 7,000 contractors. After receipt of the pilot EO Survey responses, OFCCP commissioned a study to determine whether the pilot EO Survey results could be used to predict whether a contractor would have findings of non-compliance. Bendick & Egan Economic Consultants, Inc., The Equal Opportunity Survey: Analysis of a First Wave of Survey Responses (Sept. 2000)(Bendick Report). The report concluded that the potential increases in OFCCP efficiency and effectiveness through use of the EO Survey could be substantial and recommended that use of the survey be expanded and refined. Bendick Report at 31.

OFCCP mailed 53,000 EO Surveys between December 2000 and March 2001, and 10,000 per year from 2001–2004. OFCCP commissioned another study to determine whether the EO Survey could be used to develop a model that more effectively targets contractors who engage in systemic discrimination. The report, issued in 2005, concluded that the EO Survey had little predictive value as a tool for indicating discrimination or non-compliance.[3] All of these studies have data limitations that undermine drawing firm conclusions about the true predictive power of the EO Survey. However, based primarily on this 2005 report, OFCCP rescinded the EO Survey in 2006.[4]

The purpose of the proposed new tool is to provide insight into potential problems of pay discrimination by contractors that warrant further review or evaluation by OFCCP or contractor self-audit. Accordingly, it is envisioned primarily as a screening tool, although it may also have research value. The tool would allow OFCCP to effectively and efficiently identify supply and service contractors whose compensation data indicates that further investigation is necessary to ensure compliance with the non-discrimination requirements of the Executive Order and would provide contractors with a self-assessment tool that may be used periodically to evaluate the effects of their employee compensation decisions. The data collected through this tool may be used to identify contractors for compensation focused reviews as well as full compliance reviews. Women still earn only 77 cents for each dollar earned by a man.[5] The wage gap is even greater for

[1] OFCCP also enforces Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

[2] See 41 CFR 60–2.17(b)(3).

[3] Abt Associates Inc., An Evaluation of OFCCP's Equal Opportunity Survey, p. 39, (Feb. 2005).

[4] See 71 FR 53032 (Sept. 8, 2006).

[5] Calculations from U.S. Census Bureau, Current Population Survey, 2010 Annual Social and Economic Supplement, Table PINC–05: Work Experience in 2009—People 15 Years Old and Over

Continued

women of color: non-Hispanic white women make 75 cents for every dollar earned by a non-Hispanic white man, while African-American women make 62 cents and Latinas make 53 cents for every dollar earned by a non-Hispanic white man.[6] Potentially non-discriminatory factors can explain some of these differences. Even so, after controlling for differences in skills and job characteristics, women still earn less than men.[7] Some scholars find that these differences can be explained, to some extent, by differences in education and prior labor market experience.[8] Others identify job segregation as an important cause of the pay gap.[9] Ultimately, the research literature still finds that an unexplained gap exists even after accounting for potential explanations.[10] Moreover, research literature finds that the narrowing of the pay gap has slowed since the 1980's.[11] To the extent that these factors, such as type of job or amount of continuous labor market experience, are also influenced by discrimination, the ''unexplained'' difference may understate the true effect of discrimination. In addition to the gender pay gap, scholars have found race and ethnicity-based pay gaps that put workers of color at a disadvantage.[12] As a result, eliminating compensation discrimination by Federal contractors has been, and continues to be, a priority issue for OFCCP.

Before developing a proposed regulation, OFCCP seeks comments from members of the public on issues relating to the scope, content and format of the data collection tool, as well as suggestions for ensuring that the tool will be an effective and efficient means of identifying contractors for review. In addition, OFCCP will conduct web-based and Town Hall listening sessions to provide an opportunity for stakeholders to offer suggestions and recommendations related to the scope, content and format of the data collection tool in the months ahead. Notices will be placed on OFCCP's Web site and email alerts sent out in advance. In developing a Notice of Proposed Rulemaking and the data collection tool itself, OFCCP will take into consideration comments provided in response to this Advance Notice of Proposed Rulemaking (''ANPRM'') and during the various listening sessions.

The purpose of this ANPRM, which is the first step toward publishing a Notice of Proposed Rulemaking, is to request comments and data from the public on the following issues.

Request for Comments

OFCCP is seeking comments on a series of specific questions about the possible design of its new data collection tool, as well as comments on other aspects of the tool that would assist the agency in carrying out its mission. OFCCP could use the data collected by the tool to conduct analysis at the establishment level, as well as identify and analyze industry trends, Federal contractors' compensation practices and potential equal employment-related issues. The data collected could be instrumental to developing indicators for identifying potential noncompliance by contractors and executing OFCCP's authority related to compensation discrimination.

OFCCP seeks to maximize the potential value of this data collection tool while taking into account the reporting burden created for contractors and the technology and/or analytic burdens placed on the agency. Public comment on these larger questions would be helpful with regard to any of the more specific requests for comments on the categories of data or analyses described below.

1. What data or information should be collected in order for OFCCP to assess whether further investigation into the contractor's compensation decisions and policies is necessary? In developing your response, please consider whether any of the following categories of data, reported by gender and race/ethnic groups, singly or in combination, would effectively identify potential compensation discrimination:

(a) Average starting or initial total compensation (including paid leave, health and retirement benefits, etc.);

(b) Average pay raises;

(c) Average bonuses;

(d) Minimum and maximum salary;

(e) Standard deviation or variance of salary;

(f) The number of workers in each gender and race/ethnicity category;

(g) Average tenure;

(h) Average compensation data by job series (e.g., all engineers within a particular department or all secretaries throughout the establishment); and/or

(i) Any other categories of data?

2. By what set of job categories should the data referred to in question (1) be collected? Some job group options include *EEO–1 job categories,*[13] *OFCCP's Affirmative Action Program job groups,*[14] *2 or 3-digit Standard Occupational Classification Codes,*[15] *O*Net Occupational Classification Codes,*[16] salary bands, salary bands within EEO–1 categories, individual job titles or individual job titles within EEO–1 job categories. Are there other options? What are the benefits and drawbacks of the various options?

3. What elements of compensation should be collected? In developing your response consider the following elements:

(a) Total W–2 earnings;

(b) Base salary;

(c) Holiday pay;

(d) Hourly wage;

(e) Shift differential;

(f) Commissions;

(g) Stock options; and/or

(h) Any other elements of compensation (e.g., paid leave, health or retirement benefits)?

4. Is there a set of questions that would capture information that would be helpful in understanding a contractor's compensation system, such as policies relating to promotion decisions, bonuses, shift pay, setting of initial pay, etc.?

5. OFCCP may use the data collected through the tool to conduct industry-wide compensation trend analyses.

(a) What type of compensation trend analyses would be appropriate to conduct on an industry-wide basis?

(b) For each type of analysis identified in subpart (a) above, identify the: (i) Categories of data that should be collected in order to compare compensation data across contractors in a particular industry and (ii) job groupings that should be used.

6. The data collected through the tool may be used to identify contractors in

by Total Money Earnings in 2009, Age, Race, Hispanic Origin, and Sex, *available athttp://www.census.gov/hhes/www/cpstables/032010/perinc/toc.htm* (last visited Dec. 7, 2010).

[6] *Id.*

[7] *Explaining Trends in the Gender Wage Gap,* A Report by the Council of Economic Advisers (June 1998).

[8] See O'Neill, June E., ''The Gender Gap in Wages, Circa 2000,'' American Economic Review (May 2003).

[9] Jacobsen, Joyce P., *The Economics of Gender* (2007).

[10] Jacobsen, supra; see also, e.g., Blau, Francine D. and Kahn, Lawrence M.,''The U.S. Gender Pay Gap in the 1990s: Slowing Convergence,'' 60 Industrial and Labor Relations Review 45 (2006).

[11] *Id.*

[12] Altonji, Joseph G. and Blank, Rebecca M., ''Race and Gender in the Labor Market,'' in Ashenfelter, Orley and Card, David, eds., *Handbook of Labor Economics* (1999).

[13] Employer Information Report EEO–1: EEO–1 Job Classification Guide, *available at http://www.eeoc.gov/employers/eeo1survey/upload/jobclassguide.pdf* (last visited July 13, 2011).

[14] See 41 CFR Part 60–2.

[15] Department of Labor, Bureau of Labor Statistics, Standard Occupational Classification, *available at http://www.bls.gov/soc/* (last visited July 13, 2011).

[16] Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, 2010–11 Edition, *available at http://www.bls.gov/oco/oco2007.htm* (last visited July 13, 2011).

specific industries for industry-focused compensation reviews. What specific categories of data would be most useful for identifying contractors in specific industries for industry focused compensation reviews?

7. OFCCP is exploring the possibility of using the data collected through the tool to identify opportunities for nationwide multi-establishment compensation reviews.

(a) What specific categories of data would be most useful for conducting compensation analyses across a contractor's various establishments?

(b) What are the benefits and drawbacks of collecting contractor's compensation data on a nationwide basis rather than on an individual establishment basis?

(c) What are the benefits and drawbacks of collecting contractor's compensation data on a nationwide basis in addition to an individual establishment basis?

8. The data collection tool may require contractors to submit data on an establishment basis. Given the possible designs of the tool and its proposed uses, OFCCP is interested in learning of any practical concerns contractors may have regarding responding to the compensation data request and how contractors currently record and maintain compensation data. Specifically:

(a) What general tasks would be required by a contractor in order to provide the compensation data?

(b) What categories of compensation-related data are currently maintained in computer-based personnel or payroll systems?

(c) What specific costs and/or benefits would be associated with collecting this type of data?

9. OFCCP is considering designing the tool so that it may be used by contractors to conduct self-assessments of their compensation decisions. What specific categories of data would be most useful to contractors interested in using the tool in this manner?

10. What were the strengths and weaknesses of the compensation section of the 2000 EO Survey? [17]

11. OFCCP is considering requiring contractors to submit data electronically. What factors should OFCCP take into consideration when designing this data collection tool? Interested parties should suggest preferred formats—i.e., a web-based form (like the EEO–1), excel spreadsheet, etc. What types of databases are currently used, if any, to maintain personnel and payroll data?

12. An option that OFCCP is considering is the possibility of requiring businesses that are bidding on future Federal contracts to submit compensation data as part of the Request for Proposal process. In such a case, the data collected may be used for trend analyses as well as targeting contractors for post-award compliance reviews. What are the benefits and drawbacks of administering the data collection tool in this manner?

13. Should OFCCP decide to expand the scope of the compensation data collection tool beyond supply and service contractors to include construction contractors, what factors or issues particularly relevant to such contractors should OFCCP keep in mind when designing and implementing the tool?

14. Are there other constructive suggestions for the design, content, analysis, and implementation of a compensation data collection tool?

15. Consistent with the Regulatory Flexibility Act, OFCCP must consider the impact of any proposed rule on small entities, including small businesses, small nonprofit organizations and small governmental jurisdictions with populations under 50,000. In response to this ANPRM, OFCCP encourages small entities to provide data on how they may be impacted by the requirement to provide the compensation data requested by the new data collection tool.

(a) The Department seeks public comment on the types of small entities and any estimates of the numbers of small entities that may be impacted by this rule.

(b) The Department seeks public comment on the potential identifiable costs of the data collection on small entities.

(c) The Department seeks public comment on any possible alternatives to the proposed measures that would allow OFCCP to achieve its objectives while minimizing any likely adverse impact to small businesses such as allowing smaller establishments to submit administrative data—for example, quarterly unemployment insurance tax payments that would include wage information—augmented by gender and race/ethnicity identification, but without other compensation details.

OFCCP encourages interested parties to comment on these questions and the related questions of how OFCCP can maximize the potential value of this data collection tool while taking into account the reporting burden created for contractors and the technology and/or analytic burdens placed on the agency.

Dated: August 5, 2011

Patricia A. Shiu,

Director, Office of Federal Contract Compliance Programs.

[FR Doc. 2011–20299 Filed 8–9–11; 8:45 am]

BILLING CODE 4510–45–P

[17] A blank copy of the 2000 EO Survey will be posted in www.regulations.gov as a supporting document to this ANPRM. To view the EO Survey in *http://www.regulations.gov* search by RIN number 1250–AA03.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54, 61, 64, and 69

[WC Docket No. 10–90; DA 11–1348]

Universal Service—Intercarrier Compensation Transformation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks targeted comment on certain issues in the Universal Service—Intercarrier Compensation Transformation proceeding. The Commission has received several proposals in the record in this proceeding to which we would like to receive comment from interested parties. This opportunity for additional, targeted comment will facilitate comprehensive universal service and intercarrier compensation reform.

DATES: Comments on the Pubic Notice are due on or before August 24, 2011, and reply comments are due on or before August 31, 2011.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by *e-mail: FCC504@fcc.gov* or *phone:* (202) 418–0530 or TTY: (202) 418–0432.

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

FOR FURTHER INFORMATION CONTACT: Katie King, Telecommunications Access Policy Division, Wireline Competition

Bureau, (202) 418–7400, Daniel Ball, Pricing Policy Division, Wireline Competition Bureau, (202) 418–1520 or Sue McNeil, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau at (202) 418–0660, or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Public Notice in WC Docket No. 10–90, GN Docket No. 09–51, WC Docket No. 07–135, WC Docket No. 05–337, CC Docket No. 01–92, CC Docket No. 96–45, and WC Docket No. 03–109, DA 11–1348 released August 3, 2011. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

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

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- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
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  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
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This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.

Discussion

In order to comprehensively reform and modernize the universal service fund (USF) and intercarrier compensation (ICC) system in light of recent technological, market, and regulatory changes, on February 9, 2011, the Commission released the *Universal Service and Intercarrier Compensation Transformation Notice of Proposed Rulemaking* (*USF–ICC Transformation NPRM*). The NPRM sought public comment on reforms to modernize USF and ICC for broadband, control the size of the USF as it transitions to support broadband, require accountability from companies receiving support, and use market-driven and incentive-based policies that maximize the value of scarce program resources for the benefit of consumers. Previously, on October 14, 2010, the Commission released the *Universal Service Reform—Mobility Fund Notice of Proposed Rulemaking (Mobility Fund NPRM*), 75 FR 67060, which proposed to expand mobile voice and data service availability by using a market-based mechanism to award one-time support from accumulated USF reserves. In response to the *USF–ICC Transformation NPRM,* a number of parties have offered specific proposals for reform, including a proposal by the State Members of the Federal-State Universal Service Joint Board (State Members), the ''RLEC Plan'' put forward by the Joint Rural Associations, and the ''America's Broadband Connectivity Plan'' filed by six Price Cap Companies

(''ABC Plan''). We seek comment on how these proposals comport with the Commission's articulated objectives and statutory requirements. We invite comment on specific aspects of the proposals and on additional issues that are not fully developed in the record.

I. Universal Service

A. Separate Support for Mobile Broadband

• Several parties propose that the Commission create two separate components of the Connect America Fund, one focused on ensuring that consumers receive fixed voice and broadband service (which could be wired or wireless) from a single provider of last resort in areas that are uneconomic to serve with fixed service, and one focused on providing ongoing support for mobile voice and broadband service in areas that are uneconomic to serve with mobile service (*i.e.,* a Mobile Connect America Fund), with the two components together providing annual support under a defined budget. We seek comment on providing separate funding for fixed broadband (wired or wireless) and mobility. How should the Commission set the relative budgets of two separate components? How should the budgets be revised over time?

• In the *USF/ICC Transformation NPRM,* the Commission sought comment on phasing down high-cost support for competitive eligible telecommunications carriers (competitive ETCs) over 5 years and transitioning such support to the CAF. To what extent would projected savings associated with intercarrier compensation reform for wireless carriers as proposed in the ABC Plan help offset reductions in high-cost support for competitive ETCs? We ask parties to substantiate their comments with data and remind parties that they may file data under the protective order issued in this proceeding.

B. Elimination of Rural and Non-Rural Carrier Distinctions

• In the *USF/ICC Transformation NPRM,* the Commission sought comment on two potential paths for the long term CAF: (1) Use a competitive, technology-neutral bidding process to determine CAF recipients; or (2) offer the current voice carrier of last resort a right of first refusal to serve the area for an amount of ongoing support determined by a cost model, with a competitive process if the incumbent refuses the offer. Several parties that jointly filed a letter proposing a path for reform propose a hybrid system in which support would be determined under a combination of a forward-looking cost model and competitive bidding in areas served by price cap companies, while companies that today are regulated under a rate of return methodology would continue to receive support based on embedded costs, albeit with greater accountability and cost controls. Similarly, the State Members suggest that a forward-looking model be used for price cap companies, while rate of return companies would have the option of receiving support under a model or based on embedded costs. We seek comment on the policy implications of eliminating the current references to rural and non-rural carriers in our rules and of adopting two separate approaches to determining support for carriers that operate in rural areas that are uneconomic to serve, based on whether a company is regulated under rate of return or price caps in the interstate jurisdiction.

C. CAF Support for Price Cap Areas

1. *Use of a Model.*

○ Both the State Members and the ABC Plan would use a forward-looking model to determine support amounts for areas where there is no private sector business case to offer broadband. We seek comment on what information would need to be filed in the record regarding the CostQuest Broadband Analysis Tool (CQBAT model) for the Commission to consider adopting it, as proposed in the ABC Plan.

○ The ABC Plan proposes using one technology to determine the modeled costs of 4 Mbps download/768 kbps upload service, while permitting support recipients to use any technology capable of meeting those requirements. Should the amounts determined by a model be adjusted to reflect the technology actually deployed? Is ten years an appropriate time frame for determining support levels, given statutory requirements for an evolving definition of universal service? Should the model reflect the costs of building a network capable of meeting future consumer demand for higher bandwidth that reasonably can be anticipated five years from now?

2. *Right of First Refusal (ROFR).*

○ The ABC Plan would give an incumbent local exchange carrier (LEC) the opportunity to accept or decline a model-determined support amount in a wire center if the incumbent LEC has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center. We seek comment on this proposal. Would aggregating census blocks to something other than a wire center be an improvement to the proposal? Is 35 percent a reasonable threshold? Should areas that are overlapped by an unsubsidized facilities-based provider be excluded when calculating the percentage? Is the opportunity to exercise a ROFR reasonable consideration for an incumbent LEC's ongoing responsibility to serve as a voice carrier of last resort throughout its study areas, even as legacy support flows are being phased down? Should any ROFR go to the provider with the most broadband deployment in the relevant area rather than automatically to the incumbent LEC? Alternatively, if there are at least two providers in the relevant area that exceed the threshold, should the Commission use competitive bidding to select the support recipient?

3. *Public Interest Obligations.*

○ Last year, the Federal-State Joint Board on Universal Service recommended that the Commission adopt a principle ''that universal service support should be directed where possible to networks that provide advanced services, as well as voice services.'' If that recommendation is adopted, how could the CQBAT model be improved to account for the costs of providing both broadband and voice service?

○ The State Members propose that recipients of support meet specific broadband build-out milestones at years 1, 3 and 5 of deployment. A company that exceeded a specified minimum standard, but failed to meet the higher standard at a given milestone would receive a pro rata share of support. We seek comment on what specific interim milestones would be effective in ensuring that carriers receiving CAF support are building out broadband at a reasonable rate during the specified build-out period.

○ The ABC Plan proposes that CAF recipients provide broadband service that meets specified bandwidth requirements to all locations within a supported area, but does not address the pricing of such services or usage allowances. Should the Commission adopt reporting requirements for supported providers regarding pricing and usage allowances to facilitate its ability to ensure that consumers in rural areas are receiving reasonably comparable services at reasonably comparable rates?

4. *Eligible Telecommunications Carrier (ETC) Requirements.*

○ The ABC Plan proposes a procurement model, in which recipients of CAF support incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission, and CAF recipients are

free to use any technology, wireline or wireless, that meets specified bandwidth and service requirements. What specific rule changes to the Commission's rules, including part 54, subpart C of the Commission's rules, would be necessary to implement such a proposal?

5. *State Role.*

○ The State Members and other commenters propose an ongoing role for states in monitoring and oversight over recipients of universal service support. We seek comment on specific illustrative areas where the states could work in partnership with the Commission in advancing universal service, subject to a uniform national framework, and invite comments on other suggestions. For example:

• Were the Commission to adopt a ROFR mechanism, could the states determine whether a provider has already made a substantial broadband investment in a particular area, and therefore would be eligible to be offered support amounts determined under a forward-looking model?

• Should ETCs be required to file copies of all information submitted to the Commission regarding compliance with public interest obligations with the states, as well as with USAC?

• The ABC Plan contemplates that CAF recipients would serve all business and residential locations within a supported area, but does not specifically address the obligation to serve newly built locations within a supported area over the ten-year term of the funding. Should states be charged with determining whether any charges for extending service to newly constructed buildings are reasonable, based on local conditions?

• Should states collect information regarding customer complaints, including complaints about unfulfilled service requests and inadequate service?

D. Reforms for Rate-of-Return Carriers

• In light of the RLEC Plan and the Joint Letter, as well as proposals by the State Members, we seek comment below on specific issues relating to universal service support for rate-of-return companies.

○ *Re-examining the Interstate Rate of Return.* The Joint Letter proposes that CAF calculations for areas served by rate-of-return companies would be calculated using a 10 percent interstate rate of return. The State Members recommended that the rate of return for universal service calculations be set at 8.5 percent. We seek comment on what data the Commission would need to have in the record to enable it to waive the requirements in part 65 of the Commission's rules for a rate of return prescription proceeding, so that the Commission could quickly adopt a particular rate of return.

○ *Corporate Operations Expense Limitation Formula.* We seek comment on applying the following formula to limit recovery of corporate operations expenses for high-cost loop support (HCLS), interstate common line support (ICLS), and local switching support (LSS).

For study areas with 6,000 or fewer working loops, the monthly amount per loop shall be limited to;

$42.337 − (.00328 × the number of working loops) or $50,000/the number of working loops, whichever is greater

For study areas with more than 6,000 working loops, but fewer than 17,888 working loops, the monthly amount per loop shall be limited to:

$3.007 + (117,990/number of working loops)

For study areas with 17,888 or more working loops, the monthly amount per loop shall be limited to:

$9.52 per working loop.

○ *Eliminating Support for Areas with an Unsubsidized Competitor.* In responding to the NPRM, the RLEC Plan suggested that the Commission could establish a process to reduce an incumbent's support if another facilities-based provider proves that it provides sufficient broadband and voice service to at least 95 percent of the households in the incumbent's study area without any support or cross-subsidy. We seek comment on such a process, including how to allocate costs to the remaining portions of the incumbent's study area for purposes of determining universal service support. Would a cost model be a way to allocate costs between the subsidized and unsubsidized portion of a rate-of-return study area that overlaps substantially with an unsubsidized competitor? Could state commissions administer proceedings to consider such challenges, similar to the suggestion in the ABC Plan that state commissions could elect to determine which census blocks served by price cap companies have unsubsidized competitors, and therefore are not eligible for CAF support?

○ *Limits on Reimbursable Operating and Capital Costs.* We seek comment on limiting reimbursable levels of capital investment and operating expenses for LSS.

E. Ensuring Consumer Equity

• *Rate Benchmark.* In the *USF/ICC Transformation NPRM,* the Commission sought comment on the use of a rate benchmark to encourage states to rebalance their rates and ensure that universal service does not subsidize carriers with artificially low rates. In response to the NPRM, one commenter suggested that we should develop a benchmark for voice service and reduce a carrier's high-cost support by the amount that its rate falls below the benchmark. Under such an approach, the Commission would reduce intrastate universal service support (specifically, HCLS for rural carriers and high-cost model support (HCMS) for non-rural carriers) dollar for dollar during the transition to CAF to the extent the company's local rates do not meet the specified benchmark. These reductions would not flow to other recipients. We seek comment on this proposal and proposed variations on it. Should we set the initial benchmark using the most recently available data that the Commission has regarding local rates? For example, according to the 2008 Reference Book of Rates, the average monthly charge for flat-rate service was $15.62 per month. Using the same data, the average monthly charge for flat-rate service, plus subscriber line charges of $5.74 per month, would total $21.36 per month. Should the benchmark rise over a period of three years, for instance, with an end point of $25–$30 (or some other amount) for the total of the local residential rate, federal subscriber line charge (SLC), state subscriber line charge, mandatory extended area service charges, and per-line contribution to a state's high cost fund, if one exists? Should this benchmark be the same as the ICC benchmark?

• *Total company earnings review.* The State Members recommended that a Provider of Last Resort Fund include a total company earnings review to limit a supported carrier from earning more than a reasonable return. We seek to further develop the record on the mechanics of conducting an earnings review to ensure that universal service is not providing excessive support to the detriment of consumers across the United States.

○ We seek comment on the State Members' recommendation that, at least initially, the support mechanism should not factor in either the revenues or marginal costs of video operations to avoid the risk of subsidizing video operating losses attributable to unregulated programming costs.

○ We seek comment on what total company rate of return should be used, what the mechanism should be for reducing support to the extent that total company rate of return is exceeded, and

how often a total company earnings review should be conducted.

○ We seek comment on what carriers should be required to submit to USAC, in a standard format, to facilitate a total company earnings review. For example, should we require submission of the audited financial statements for the incumbent LEC, a consolidated balance sheet and income statement for the incumbent LEC and its affiliates, a list of affiliates, a schedule showing dividends paid to shareholders or patronage refunds distributed to members of cooperatives for the last five years, a Cost Allocation Manual, an explanation of how revenues from bundled services are booked, a trial balance of accounts at a Class B accounting level or greater, and the number of retail customers served by the incumbent LEC and its affiliates for voice and broadband service?

F. Highest-Cost Areas

• The ABC Plan would rely on satellite broadband to serve extremely high-cost areas. We seek comment on a proposal by ViaSat to create a Competitive Technologies Fund to distribute support through a combination of a reverse auction and consumer vouchers to enable consumers in highest-cost areas to obtain service from wireless, satellite, or other providers.

• We also seek comment on what obligations are appropriate to impose on recipients of funding, as a condition of receiving support, to facilitate provisioning by others in areas the recipients are not obligated to serve. For example, Public Knowledge has proposed to require recipients to make interconnection points and backhaul capacity available so that unserved high-cost communities could deploy their own broadband networks. Should recipients' Acceptable Use Policies also be required to allow customers to share their broadband connections with unserved customers nearby, for example, through the use of WiFi combined with directional antenna technology?

G. CAF Support for Alaska, Hawaii, Tribal Lands, U.S. Territories, and Other Areas

• GCI has proposed an Alaska-specific set of universal service reforms that it asserts better reflect the operating conditions in Alaska and the lower level of broadband and mobile deployment in that state. We seek comment on this proposal for Alaska, and ask whether this, or a similar approach, would also be warranted for Hawaii, Tribal lands, the U.S. Territories, or other particular areas, and how we should consider such proposals in light of the Tribal lands exclusion from the current cap on high-cost support for competitive ETCs. We further seek comment on other proposals relating to Alaska and Hawaii that have been proposed in the record. We further seek comment on how such proposals could be improved, if the Commission were to adopt a plan to constrain the size of the CAF and access restructuring within a $4.5 billion annual budget, and whether, in the alternative, other modifications are warranted to the national policy to better reflect operating conditions in these areas.

H. Implementing Reform Within a Defined Budget

• The ABC Plan recommends a five-year transition for phasing down legacy funding, concomitant with a phase-in of potential CAF support, including potential access recovery associated with intercarrier compensation reform; the Joint Letter suggests several potential measures that could be taken to keep support totals within a budget, such as phasing in funding for mobility, deferring CAF funding for study areas served by particular price cap companies, or deferring reductions in intercarrier compensation. We seek comment on the implications of these and alternative proposals, including variations to the Commission's prior proposals regarding safety net additive (SNA) and LSS, for ensuring that total funding remains within a defined budget.

I. Interim Reforms for Price Cap Carriers

• As an interim step, Windstream, Frontier and CenturyLink suggest that the Commission could immediately target support that currently flows to price cap carriers to the highest-cost wire centers within their service territories, using a regression analysis based on the Commission's existing high-cost model to estimate wire center forward-looking costs for both rural and non-rural price cap carriers. We seek comment on this proposal and how it relates to other proposals in the record for comprehensive reform.

○ In addition to combining and distributing HCLS and HCMS, should the Commission also include funds currently provided through LSS and SNA to price cap carriers? Should we also include funds currently provided to price cap carriers through interstate access support (IAS) and frozen ICLS?

○ Should the Commission increase annual HCMS support by an additional amount, such as $100 to $200 million, to be repurposed from ongoing reductions in support for companies that have chosen to relinquish universal service funding? Should we impose a cap on the amount of support a carrier is eligible to receive for a wire center? For instance, should that cap be set at $250 per line per month, similar to the Commission's proposal for a cap in total support for all existing recipients?

○ What public interest obligations for using funding for broadband-capable networks should apply to carriers receiving support under this approach? Should carriers receiving such support be prohibited from using the funds in areas that are served by an unsubsidized facilities-based broadband provider?

○ Do any special circumstances exist in the states of Alaska and Hawaii, or Territories and Tribal lands generally, or other areas, that warrant a different approach for price cap carriers serving such areas, if the Commission were to adopt this interim measure?

II. Intercarrier Compensation

A. Federal-State Roles

1. *Federal Framework.*

• The ABC Plan proposes that the Commission set the framework to reduce intrastate access rates, and recovery to the extent necessary for those reduced intrastate access revenues would come from the federal jurisdiction through a combination of federal SLC increases and federal universal service support.

○ How would this aspect of the ABC Plan affect states in different stages of intrastate access reform—those that have undertaken significant reform and moved intrastate rates to parity with interstate rates, those in the process of reform, and states that have not yet initiated reform?

○ The ABC Plan provides a uniform, consistent framework for reform across all states. We seek comment on whether the ABC Plan could be improved by providing states incentives to increase artificially low consumer rates or create state USFs for example through the use of a consumer monthly rate ceiling or benchmark or by requiring states to contribute a certain amount per line of recovery to offset intrastate rate reductions?

• In calculating access recovery, the ABC Plan proposes a $30 ''rate benchmark'' for price cap carriers, and the Rate-of-Return plan proposes a $25 benchmark, both of which are structured as a ceiling on consumer rate increases (via a federal SLC), to limit increases on consumer rates in states where such rates have already been raised as part of intrastate access reform. Is this ceiling sufficient to mitigate any

potential impact on consumers in states that have already begun reforms (and thus are already paying increased local rates and/or state universal service contributions associated with such reform) relative to consumers in states that have not yet undertaken such reforms (for which all recovery would come through the federal mechanism in the ABC Plan)? Should there be different rate benchmarks for different carriers or should there be a single benchmark?

• In the ABC Plan, in calculating access recovery, the initial consumer monthly rate is taken as a snapshot in time as of January 1, 2012. In lieu of a snapshot, and in order to avoid deterring states from rebalancing local rates and/or establishing state USFs, should the rate used to determine access recovery be the ''higher of'' (1) The rate as of January 2012 and (2) the rate at future points before annual access recovery amounts are calculated? In this scenario, any increased consumer rates as a result of state reforms, would count toward the benchmark, more accurately reflecting the actual consumer burden at that time.

• A rate benchmark could also be used as an imputation for a certain level of end-user recovery for intrastate rate reductions, rather than as a ceiling on federal SLC increases. For instance, the Ad Hoc Telecommunications Users Committee proposes a local rate benchmark that could be imputed, rather than used as a ceiling, and commenters propose a range of possible benchmarks from $25–$30. Would an imputation approach better encourage states that currently depend on long distance consumers to help subsidize local phone service for their local consumers to bring consumer rates to levels more comparable to the national average? What would be the appropriate level for such a benchmark, and should it be phased in over time?

• Instead of or in addition to a rate benchmark, should states be responsible for contributing a certain dollar amount per line to aid in access recovery? The State Members, for example, suggest that states contribute $2 per line for purposes of universal service. In this scenario, a state would be responsible for recovery of $2 per line of reduced intrastate access revenues, which could be imputed to carriers before they become eligible for federal recovery. Does this approach appropriately balance the interests of consumers in states that already have implemented some reforms, with the associated burden of reform being born by consumers in those states, rather than federal recovery mechanisms? If so, should states that already have a state universal service fund be exempted completely from this per-line contribution, or only to the extent of, for example, the $2 per line state contribution to recovery?

2. *State-Federal Framework.*

• In the alternative, the State Members propose that the states reform intrastate rates and that the Commission facilitate this reform through state inducements rather than a federal framework. We seek comment on this proposal.

○ To address concerns that some states may not reform intrastate access charges, we seek comment on a framework, similar to a proposal in the *USF/ICC Transformation NPRM*, under which states have three years to develop an intrastate reform plan. Under this alternative, after three years, the Commission would set a transition for reducing intrastate access rates and deny any further federal recovery to offset reduced intrastate revenue.

○ If the Commission adopts the state-federal framework approach advocated by the State Members, how can the Commission best incent states to reform intrastate access rates? Should the Commission match some federal universal service dollars to a state universal service fund for states that are using such a fund to reform intrastate access charges? Such matching could be structured in several different ways, including on a per-line basis (such as $1–2), as a percentage of the state contribution, or on an aggregate state basis. We seek further comment on how such a match should be structured to provide adequate inducements and maintain our commitment to control the size of the federal high cost fund.

• Under the framework of leaving reform of intrastate rates initially to the states, the Commission would begin immediate reforms of interstate access charges. We seek comment on a glide path for the Commission to reduce all interstate access rate elements. Should the length of the rate transition vary, providing three years for price cap carriers and five years for rate-of-return carriers, given that rate of return carriers' interstate access rates are higher at the outset? What should the transition be for competitive LECs? Would an approach that provides different transitions for different types of carriers, whether competitive, price cap or rate-of-return LEC raise any policy concerns? We also seek comment on whether the Commission should reduce originating interstate access rates and, if so, whether we should require the reductions at the same time or only after terminating rates have been reduced.

B. Scope of Reform

• We seek comment on the approach outlined in the ABC Plan to reform substantially terminating rates for end office switching while taking a more limited approach to reforming certain transport elements and originating access. Would any problematic incentives, such as arbitrage schemes, arise from or be left in place by such an approach, and if so, what could be done to mitigate them?

C. Recovery Mechanism

• We seek comment on the appropriate recovery mechanism for ICC reform, including the ABC Plan's and the Joint Letter's recovery proposals. We also seek comment on the relative merits and incentives for carriers associated with an alternative approach that provides more predictable recovery amounts, such as the alternative described below.

1. *Federal-State Role in Recovery.*

○ As noted above, the ABC Plan proposes to shift recovery for reduced intrastate access charge revenues to the federal jurisdiction. Could the Commission achieve more comprehensive reform of intercarrier compensation rate elements if recovery is achieved through a federal-state partnership? We seek comment above on different means by which states could share responsibility for recovery of reduced intrastate access revenues.

2. *Price Cap Carriers.*

○ For price cap carriers electing to receive support from the transitional access replacement mechanism, the ABC Plan's recovery proposal includes annual true-ups to adjust for possible increases or decreases in minutes of use. Although minutes of use for incumbent LECs have been declining, the ABC Plan's proposal establishing how VoIP minutes are included in the intercarrier compensation system prospectively and addressing phantom traffic could cause minutes of use to flatten or possibly even increase. In addition, the ABC Plan would treat all VoIP traffic as interstate, which potentially could reduce the minutes billed at intrastate access rates (depending upon existing payment practices). Thus the true-up approach could result in the need for additional recovery, including additional federal universal service funding. We seek comment on alternatives to the true-up process.

○ For example, as an alternative to true ups, we seek comment on a baseline for recovery that would be 2011

access revenues subject to reform, reduced by 10% annually to account for decline in demand (*i.e.,* 90% of 2011 revenues in year one (2012), 81.0% in year two (2013), 72.9% in year three (2014), 65.6% in year four (2015), etc.). This (or a similar framework that may be suggested by commenters) would be a brightline, predictable approach that would not include true-ups, regardless of whether demand declines more quickly or more slowly. If carriers reduce costs or are more efficient, this approach would enable carriers to realize the benefits of these savings.

3. *Rate of Return Carriers.*

○ We seek comment below on an alternative approach for recovery (or other approaches that commenters might suggest) that would maintain the predictable revenue stream associated with rate of return principles while also providing carriers with better incentives for efficient investment and operations. This option would provide a fixed percentage of recovery (which could be 100%) of all reduced terminating access charges (both intrastate and interstate) based on year 2011 revenues, but without true-ups to reflect changes in the revenue requirement historically used for interstate access charges. This recovery mechanism would lock in revenue streams, including intrastate access revenues, which have been declining annually for many interstate rate-of-return carriers. It thus provides more predictable revenue recovery while also providing incentives for carriers to reduce costs and realize the benefits of these cost savings. The eligible recovery amount would be recovered through end-user charges and universal service support as described in the Joint Letter's proposal. We also seek comment on the duration of recovery funding under this alternative. Should it be phased out over time following the completion of rate reforms, such as with the loss of demand?

4. *Reciprocal Compensation.*

○ The ABC Plan's proposal provides recovery for reductions in reciprocal compensation rates to the extent they are above $0.0007, but the ABC Plan estimates on the impact of the federal universal service fund do not include estimated recovery from reciprocal compensation. We ask whether providing federal universal service support for reductions in reciprocal compensation rates strikes the appropriate policy balance as we seek to control the size of the universal service fund, and whether there are alternatives to such an approach.

5. *Originating Access.*

○ If the Commission were to address originating access as part of comprehensive reform, should the Commission treat originating access revenues differently from terminating access revenues for recovery purposes since, in many cases, the originating incumbent LEC's affiliate is offering the long distance service? For example, is it necessary to provide any recovery for the originating access that an incumbent LEC historically charged for originating calls from the retail long distance customers of its affiliate?

○ Alternatively, should recovery for such originating access take the form of a flat per-customer charge imposed on the incumbent LEC's long distance affiliate for each of its presubscribed customers? Should such a flat originating access replacement charge be used for recovery of all originating access revenues more generally? How would any of these approaches be implemented? Should any flat originating access replacement charge differ by end-user customer class (such as residential vs. business), by level of demand, or otherwise?

○ We seek the following data to help us evaluate originating access reform:

• Separately for price cap and rate-of-return incumbent LECs, the number of (1) Long distance minutes that the average customer originates; (2) 8YY minutes that the average customer originates; and (3) long distance and 8YY minutes that the average customer receives (terminating minutes); and

• Whether the ratio of originated long distance minutes to originated 8YY minutes varies materially with the level of the customers' expenditure on telecommunications services.

D. Impact on Consumers

• We seek comment on how to ensure that consumers realize benefits of reduced long distance and wireless rates as part of intercarrier compensation reform. The ABC Plan attaches a paper by Professor Jerry Hausman analyzing the consumer benefits of intercarrier compensation reform. Should the potential realization of consumer pass through benefits from intercarrier compensation reform be left to the market, as Professor Hausman asserts, or should any steps be taken to ensure that such benefits are realized by consumers? If so, what steps should be taken?

• The ABC Plan permits incumbent carriers to increase the consumer SLC up to $9.20 before increasing the multiline business SLC, although multiline business SLCs potentially could increase once consumer SLCs reach that level. To decrease the potential burden on consumers and the federal universal service fund, should multiline business customers also see a modest SLC increase and, if so, how much?

• The ABC Plan permits incumbent carriers to increase consumer SLC rates $0.50–0.75 per year for five years or until the consumer's rate reaches the rate benchmark of $30. Similarly, the Joint Letter permits incumbent carriers to increase consumer SLC rates $0.75 per year for six years or until the consumer's rate reaches the rate benchmark of $25. Professor Hausman's paper indicates that companies are constrained by competition, which could mean that companies may not be able to increase SLC rates on consumers. We seek comment on the actual likely consumer impact of SLC increases, in the aggregate and with as much granularity (*e.g.,* by company, by type of state, by specific state) as can be provided. We also seek comment on proposals that the need for any recovery should be based on the carrier's showing of need based on its operations more broadly.

• We seek the following data to help us quantify consumer benefits from intercarrier compensation reform:

○ If ICC termination rates that currently exceed $0.0007 are reduced to $0.0007, the services where pass through is likely to occur (perhaps, for example, long distance, wireless service, 8YY services and monthly line rentals) and the likely extent of that pass through; and

○ Estimates of demand elasticities for those services where pass through is likely to occur.

E. VoIP ICC

• *Implementation.* We seek comment on the implementation of the ABC Plan's proposal for VoIP intercarrier compensation. Under that proposal, VoIP access traffic would be subject to intercarrier compensation rates different from rates applied to other access traffic during the first part of the transition.

○ How would VoIP traffic subject to the ICC framework be identified for purposes of the proposed tariffing regime?

○ Would it be feasible to use call record information or factors or ratios to identify the portion of overall traffic that is (or reasonably is considered to be) relevant VoIP traffic, perhaps subject to certification or audits?

○ Should the Commission identify a ''safe harbor'' percentage of VoIP traffic for use in this context? If so, what should be the factual basis for such a safe harbor? For example, Global Crossing estimates ''that on average

roughly fifty to sixty percent of the traffic [on its network] is VoIP.'' Would that, or other data, provide a basis for a safe harbor?

○ Are there alternative mechanisms besides tariffs that could be used to determine the amount of VoIP traffic exchanged between two carriers for purposes of the VoIP ICC framework, and if so, what would be the relative merits of such an approach?

• *Call Signaling.* In the *USF/ICC Transformation NPRM* the Commission proposed to apply new call signaling rules designed to address phantom traffic to telecommunications carriers and interconnected VoIP providers. Some commenters have expressed concerns about whether and how the proposed rules would apply to one-way interconnected VoIP providers. In particular, we seek to further develop the record regarding possible implementation of any new call signaling rules that apply to one-way interconnected VoIP providers.

○ If call signaling rules apply to one-way interconnected VoIP providers, how could these requirements be implemented? Would one-way interconnected VoIP providers be required to obtain and use numbering resources? If not, how could the new signaling rules operate for originating callers that do not have a telephone number?

○ If one-way interconnected VoIP providers were permitted to use a number other than an actual North American Numbering Plan (NANP) telephone number associated with an originating caller in required signaling, would such use lead to unintended or undesirable consequences? If so, should other types of carriers or entities also be entitled to use alternate numbering?

○ Would there need to be numbering resources specifically assigned in the context of one-way VoIP services? Are there other signaling issues that we should consider with regard to one-way VoIP calls?

○ If call signaling rules were to apply signaling obligations to one-way interconnected VoIP providers, at what point in a call path should the required signaling originate, *i.e.*, at the gateway or elsewhere?

○ To what extent are such requirements necessary to implement the ABC Plan's and Joint Letter's proposals that billing for VoIP traffic be based on call detail information? More broadly, what particular call detail information would be used for this purpose? What are the relative advantages or disadvantages of treating such call detail information as dispositive for determining whether access charges or reciprocal compensation rates apply?

Federal Communications Commission.

Marcus Maher,

Deputy Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 2011–20322 Filed 8–9–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2011–0043; MO 92210–0–0008]

RIN 1018–AX83

Endangered and Threatened Wildlife and Plants; Proposed Listing of the Miami Blue Butterfly as Endangered, and Proposed Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Miami blue butterfly (*Cyclargus thomasi bethunebakeri*) as endangered under the Endangered Species Act of 1973, as amended (Act). An emergency rule listing this subspecies as endangered for 240 days is published concurrently in this issue of the **Federal Register.** We also propose to list the cassius blue butterfly (*Leptotes cassius theonus*), ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), and nickerbean blue butterfly (*Cyclargus ammon*) as threatened due to similarity of appearance to the Miami blue, with a special rule pursuant to section 4(d) of the Act. We solicit additional data, information, and comments that may assist us in making a final decision on this proposed action.

DATES: Comments from all interested parties must be received by October 11, 2011. Public hearing requests must be received by September 26, 2011.

ADDRESSES: You may submit comments by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on docket number FWS–R4–ES–2011–0043.

• *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* FWS–R4–ES–2011–0043; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Paula Halupa, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960–3559 by telephone 772–562–3909, ext. 257 or by *electronic mail: miamiblueinfo@fws.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

Our intent is to use the best available commercial and scientific data as the foundation for all endangered and threatened species classification decisions. Therefore, we request comments or suggestions from other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule to list the Miami blue butterfly (*Cyclargus thomasi bethunebakeri*) as endangered. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Miami blue butterfly;

(2) The location of any additional populations of the Miami blue butterfly within or outside the United States;

(3) Additional information regarding the taxonomy, genetics, life history (*e.g.,* dispersal capabilities, host plants, nectar sources, dependence on ants), range, distribution, population size, and metapopulation dynamics of the Miami blue;

(4) Current or planned activities in occupied or potential habitat and their possible impacts to the Miami blue;

(5) The reasons why any habitat should or should not be determined to be critical habitat for the Miami blue as provided by section 4 of the Act, including physical and biological features within areas occupied or specific areas outside of the geographic area occupied that are essential for the conservation of the subspecies;

(6) Threats to the Miami blue butterfly from collection of or commercial trade involving the cassius blue butterfly (*Leptotes cassius theonus*), ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), and nickerbean blue butterfly (*Cyclargus ammon*), due to the

Miami blue's similarity in appearance to these species.

(7) Effects of the proposed 4(d) special rule to establish prohibitions on collection of, or commercial trade involving, the cassius blue butterfly, ceraunus blue butterfly, and nickerbean blue butterfly).

Please note that 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, as 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 comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on, or by appointment, during normal business hours at the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

The Miami blue butterfly is known to occur on only a few, small remote islands within the Florida Keys. The geographic range of this butterfly, which once extended from the Dry Tortugas north along the Florida coasts to about St. Petersburg and Daytona, has been severely reduced. The subspecies is now restricted to Key West National Wildlife Refuge (KWNWR), Monroe County, Florida, where the only confirmed metapopulation(s) (group of smaller populations that have some interaction) occurs. No other extant populations are known at this time. In 2009, metapopulations existed at two main locations: Bahia Honda State Park (BHSP) and KWNWR, roughly 50 miles (80 kilometers [km]) apart. The metapopulation at KWNWR was believed to be several hundred adults in 2007, possibly more, with fewer reported in 2009 through July 2011. From 1999 to 2009, the metapopulation at BHSP appeared to be generally restricted to 200 adults or fewer. This metapopulation may now be extirpated; no adults have been located at BHSP since July 2010. The remaining metapopulation(s) occurs entirely within KWNWR. Abundance is not known, but is estimated in the hundreds or fewer. Recent available count data are limited, but show wide fluctuations.

The Miami blue butterfly is imminently threatened by the combined influences of habitat destruction or modification, herbivory of host plants by exotic green iguanas (*Iguana iguana*), illegal collection, accidental harm from humans, restricted range, small population size, loss of genetic heterogeneity, and catastrophic environmental events. Predation and disease may also be a threat due to the small population size. The Miami blue butterfly, if it is found to persist elsewhere in its historical range (*i.e.,* outside of its most recent known occurrences), is threatened by habitat loss and fragmentation, pesticide application from mosquito control practices, displacement of native host plants by invasive exotic species, detrimental land management practices, inadequate regulatory protection, restricted genetic exchange, and vulnerability to extirpation from severe or catastrophic weather events in addition to the threats listed above. Environmental effects from climatic change, including sea level rise, are also significant long-term threats that are expected to substantially reduce the butterfly's habitat in both its current and historical range.

For an extensive discussion of biological background information, previous Federal actions, factors affecting the subspecies, our determination of status under the Act, conservation measures available to listed and proposed species, similarity of appearance, and special rules, consult the emergency rule for the Miami blue butterfly published concurrently in this issue of the **Federal Register**.

Critical Habitat and Prudency Determination

Critical habitat is defined in section 3(5)(A) of the Act as (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) Essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation is defined in section 3(3) of the Act as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, we designate critical habitat at the time we determine that a species is endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We have determined that both circumstances apply to the Miami blue butterfly. This determination involves a weighing of the expected increase in threats associated with a critical habitat designation against the benefits gained by a critical habitat designation. An explanation of this ''balancing'' evaluation follows.

Increased Threat to the Subspecies by Designating Critical Habitat

Designation of critical habitat requires the publication of maps and a narrative description of specific critical habitat areas in the **Federal Register**. The degree of detail in those maps and boundary descriptions is greater than the general location descriptions provided in this proposal to list the species as endangered. We are concerned that designation of critical habitat could more widely announce the exact location of the butterflies to poachers, collectors, and vandals and further facilitate unauthorized collection and trade. Due to its extreme rarity (a low number of individuals, combined with small areas inhabited by the remaining metapopulation), this butterfly is highly vulnerable to collection. Vandalism, disturbance, and other harm from humans are also serious threats to the butterfly and its habitat (see Factors B and E of

emergency rule). At this time, removal of any individuals or damage to habitat may have devastating consequences for the survival of the subspecies. We believe that these threats will be exacerbated by the publication of maps and descriptions outlining the specific locations of this critically imperiled butterfly in the **Federal Register** and local newspapers. Maps and descriptions of critical habitat, such as those which would appear in the **Federal Register** if critical habitat were designated, are not now available to the general public.

Although we do not have specific evidence of taking for this subspecies, illegal collection of imperiled butterflies from State, Federal, and other lands in Florida appears ongoing, prevalent, and damaging (see Factor B analysis of emergency rule for specific cases). In addition, we are aware that a market exists for trade in rare, imperiled, and listed butterflies, including those in south Florida (see Factor B analysis of emergency rule). For example, there is currently a demand for two other butterflies from south Florida that are candidates for listing under the Act, the Florida leafwing (*Anaea troglodyta floridalis*) and Bartram's hairstreak (*Strymon acis bartrami*). At least one website we are aware of offers specimens of the Florida leafwing and Bartram's hairstreak for up to €110.00 and €10.00 (euros), respectively (approximately $154.00 and $14.00) (Lit. cited 2011a). A forum on another website documents strong interest in trade or outright purchase of specimens among collectors (Lit. cited 2011b). Although it is unclear from where the specimens originated or when they were collected, these butterflies occur predominantly on conservation lands, where collection is prohibited.

Additionally, we are aware of a market for butterflies that look similar to the Miami blue, including all three of the subspecies proposed for listing due to similarity of appearance (see emergency rule), as well as other *Cyclargus thomasi* subspecies that occur in foreign countries. It is clear that a demand currently exists for both imperiled butterflies and those similar in appearance to the Miami blue. Due to the few metapopulations, small population size, restricted range, and remoteness of occupied habitat, we believe that collection is a significant threat to the Miami blue butterfly and could occur at any time. Even limited collection from the remaining population (or other populations, if discovered) could have deleterious effects on reproductive and genetic viability and thus could contribute to its extinction. Identification of critical habitat would increase the severity of this threat by spatially depicting exactly where the subspecies may be found and more widely publicizing this information, exposing the fragile population and its habitat to greater risks.

Identification and publication of critical habitat may also increase the likelihood of inadvertent or purposeful habitat destruction. Damage to host plants from humans has been documented in the past (see Factor E of emergency rule). Recreation within occupied areas has resulted in trampling of vegetation and negative impacts to the subspecies and its habitat (see Factor E of emergency rule). High visitation and illicit uses (*e.g.,* fire pits, camping, vandalism) within occupied and suitable habitat have resulted in local disturbances (see Factor E of emergency rule). Identification and advertisement of critical habitat will likely generate interest by the public, potentially leading to additional use of and increased risk to sensitive habitats. Inadvertent impacts from humans, including human-induced fire, are now significant threats to habitat within portions of the subspecies' occupied range (see Factor E of emergency rule). Immature stages (eggs, larvae), which are sedentary, are particularly vulnerable. Identification and publication of critical habitat would likely increase exposure of sensitive habitats and increase the likelihood and severity of threats to both the subspecies and its habitat.

Identification and publication of critical habitat would also likely increase enforcement problems. Though take prohibitions exist, effective enforcement is difficult. As discussed in Factors B, D, and E and elsewhere in the emergency rule, the threat of collection and inadvertent impacts from humans exists; areas are already difficult to patrol. Areas within the KWNWR are remote and accessible mainly by boat, making them difficult for law enforcement personnel to patrol and monitor. We believe that designation of critical habitat would facilitate further use and misuse of sensitive habitats and resources, creating additional difficulty for law enforcement personnel in an already challenging environment. Overall, we believe that designation of critical habitat will increase the likelihood and severity of the threats of illegal collection of the subspecies and destruction of sensitive habitat, as well as exacerbate enforcement issues.

Benefits to the Subspecies From Critical Habitat Designation

It is true that designation of critical habitat for the Miami blue butterfly within the KWNWR or BHSP would have some beneficial effects. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of that species' critical habitat (see Available Conservation Measures and Jeopardy Standard sections of the emergency rule). Critical habitat only provides protections where there is a Federal nexus, that is, those actions that come under the purview of section 7 of the Act. Critical habitat designation has no application to actions that do not have a Federal nexus. Section 7(a)(2) of the Act mandates that Federal agencies, in consultation with the Service, evaluate the effects of its proposed action on any designated critical habitat. Similar to the Act's requirement that a Federal agency action not jeopardize the continued existence of listed species, Federal agencies have the responsibility not to implement actions that would destroy or adversely modify designated critical habitat. Critical habitat designation alone, however, does not require that a Federal action agency implement specific steps toward species recovery.

All areas known to support the Miami blue butterfly during the past 13 years are or have been on Federal or State lands; these areas are currently being managed for the subspecies. Management efforts are consistent with, and geared toward, Miami blue conservation, and such efforts are expected to continue in the future. Because the butterfly exists only as one or possibly two small metapopulations, any future activity involving a Federal action that would destroy or adversely modify critical habitat would also likely jeopardize the subspecies' continued existence (see Jeopardy Standard within emergency rule). Consultation with respect to critical habitat would provide additional protection to a species only if the agency action would result in the destruction or adverse modification of the critical habitat but would not jeopardize the continued existence of the species. In the absence of a critical habitat designation, areas that support the Miami blue butterfly will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections

afforded by the section 7(a)(2) jeopardy standard, as appropriate. Federal actions affecting the Miami blue butterfly even in the absence of designated critical habitat areas will still benefit from consultation pursuant to section 7(a)(2) of the Act and may still result in jeopardy findings. Therefore, designation of specific areas as critical habitat that are currently occupied or recently occupied is unlikely to provide measurable benefit to the subspecies.

Another potential benefit to the Miami blue butterfly from designating critical habitat is that it could serve to educate landowners, State and local government agencies, Refuge or Park visitors, and the general public regarding the potential conservation value of the area. Through the processes of listing the butterfly under the State of Florida's endangered species statute in 2002 and the recognition of the Miami blue as a Federal candidate subspecies in 2005, much of this educational component is already in effect. Agencies, organizations, and stakeholders are actively engaged in efforts to raise awareness for the butterfly and its conservation needs. For example, the North American Butterfly Association has a Miami blue chapter, which helps promote awareness for the subspecies. The Florida Fish and Wildlife Conservation Commission and partners have also formed a workgroup, in part to raise awareness for imperiled butterflies in south Florida. Staff at BHSP have also recruited volunteers to help search for the subspecies within the Park and surrounding areas, and they have organized speakers to inform the general public about the butterfly. In addition, designation of critical habitat could inform State agencies and local governments about areas that could be conserved under State laws or local ordinances. However, since awareness and education involving the Miami blue is already well underway, designation of critical habitat would likely provide only minimal incremental benefits.

Increased Threat to the Subspecies Outweighs the Benefits of Critical Habitat Designation

Upon reviewing the available information, we have determined that the designation of critical habitat would increase the threat to the Miami blue butterfly from unauthorized collection and trade, and may further facilitate inadvertent or purposeful disturbance and vandalism to the Miami blue's habitat. At the same time, we believe that designation of critical habitat is likely to confer little measurable benefit to the subspecies beyond that provided by listing. Overall, we believe that the risk of increasing significant threats to the subspecies by publishing location information in a critical habitat designation greatly outweighs the benefits of designating critical habitat.

In conclusion, we find that the designation of critical habitat is not prudent, in accordance with 50 CFR 424.12(a)(1), because the Miami blue butterfly is threatened by collection and habitat destruction, and designation can reasonably be expected to increase the degree of these threats to the subspecies and its habitat. Critical habitat designation could provide some benefit to the subspecies, but these benefits are significantly outweighed by the increased risk of collection pressure, habitat destruction, and enforcement problems that could result from depicting, through publicly available maps and descriptions, exactly where this extremely rare butterfly and its habitat can be found. However, we seek public comment on our determination that designation of critical habitat is not prudent (see Public Comments Solicited section earlier in this rule for instructions on how to submit comments).

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such a review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and the data that are the basis for our conclusions regarding the proposal to list the Miami blue butterfly as endangered and our prudency determination regarding critical habitat for this subspecies.

We will consider all comments and information we receive during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposal in the **Federal Register** (see **DATES**). Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodation, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Persons needing reasonable accommodation to attend and participate in a public hearing should contact the South Florida Ecological Services Field Office at 772–562–3909, as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposed rule is available in alternative formats upon request.

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act (44 U.S.C. 3501, et seq.)

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

References Cited

A complete list of all references cited in the emergency rule published concurrently in this issue of the **Federal Register** is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this proposed rule is the staff of the South Florida Ecological Services Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble of the emergency rule listing the Miami blue butterfly (*Cyclargus thomasi bethunebakeri*) as endangered and the cassius blue butterfly (*Leptotes cassius theonus*), ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), and nickerbean blue butterfly (*Cyclargus ammon*) as threatened due to similarity of appearance, published concurrently in the Rules and Regulations section of this issue of the **Federal Register,** we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. This document proposes to establish the provisions of the emergency rule published elsewhere (in this issue of the **Federal Register**) as a final rule.

Dated: July 27, 2011.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–19818 Filed 8–9–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17 and 224

[Docket No. 110110016–1039–01]

RIN 0648–XA144

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Saltmarsh Topminnow as Threatened or Endangered Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Fish and Wildlife Service (USFWS), Interior.

ACTION: 90-day petition finding; request for comments, and initiation of a status review.

SUMMARY: We (NMFS and USFWS; also collectively referred to as the Services) announce a 90-day finding on a petition to list the saltmarsh topminnow (topminnow; *Fundulus jenkinsi*) as threatened or endangered under the Endangered Species Act (ESA). We find that the petition presents substantial scientific information indicating that the petitioned action may be warranted. We will conduct a status review of the species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data on the species (see below).

DATES: Information and comments on the subject action must be received by October 11, 2011.

ADDRESSES: You may submit information by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. In the box that reads ''Enter Keyword or ID,'' enter the Docket number for this finding, which is 110110016–1039–01. Check the box that reads ''Open for Comment/Submission,'' and then click the Search button. You should then see an icon that reads ''Submit a Comment.'' Please ensure that you have found the correct rulemaking before submitting your comment.

U.S. mail or hand-delivery: Public Comments Processing, Attn: 110110016–1039–01; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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.

Copies of the petition and related materials are available upon request from the Assistant Regional Administrator, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; Project Leader, USFWS, Panama City Ecological Services Office, 1601 Balboa Ave., Panama City, FL 32405; or online at: *http://www.nmfs.noaa.gov/pr/species/esa/other.htm*

FOR FURTHER INFORMATION CONTACT: Jason Rueter, NMFS Southeast Region, (727) 824–5312, Dwayne Meadows, NMFS Office of Protected Resources, (301) 713–1401, or Catherine Phillips, FWS, Panama City Ecological Services Office, (850) 769–0552.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2010, we received a petition from WildEarth Guardians and Ms. Sarah Felsen to list the saltmarsh topminnow (*Fundulus jenkinsi*) as threatened or endangered under the ESA and to list the species under the emergency listing provisions of the ESA (16 U.S.C. 1533(b)(7)) owing to perceived threats from the Deepwater Horizon oil spill. Copies of this petition are available from us (see **ADDRESSES,** above).

Since the petition was sent to both NMFS and USFWS, and we both had information in our files concerning the species, we are jointly responding to the 90-day finding. The species' salt marsh, estuarine habitat falls within an area where both NMFS and FWS manage species. USFWS will be responsible for conducting the 12-month finding and determining if listing the saltmarsh topminnow is warranted and has agreed to assume sole jurisdiction from this point forward.

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA, as amended (16 U.S.C. 1531 *et seq.*), requires that, to the maximum extent practicable, within 90 days of receipt of a petition to list a species as threatened or endangered the Services make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a ''may be warranted'' finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a ''species,'' which is defined to also include subspecies and, for any vertebrate species, any distinct population

segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and/or (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and the USFWS (50 CFR 424.14(b)) define ''substantial information'' in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Court decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action ''may be'' warranted. As noted in the discussion of 12-month findings above, these decisions hold that a petition need not establish a ''strong likelihood'' or a ''high probability'' that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioner's assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by other organizations or agencies, as evidence of extinction risk for a species. Risk classifications of the petitioned species by other organizations or made under other Federal or state statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, a non-profit conservation organization spun-off from state natural heritage programs and The Nature Conservancy that provides scientific status rankings and assessments for at-risk species, its assessments of a species' conservation status do ''not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act'' because NatureServe assessments ''have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide.'' (*http://www.natureserve.org/prodServices/statusAssessment.jsp*). Thus, when a petition cites such classifications, we will evaluate the source information upon which the classification is based in light of the standards on extinction risk and impacts or threats discussed above.

Distribution and Life History of Saltmarsh Topminnow

The saltmarsh topminnow is one of the smallest members of the Fundulidae family; individuals are typically smaller than 45 mm long. The topminnow has cross-hatching on its back and sides that may be gray-green. Most individuals have 12 to13 dark round spots arranged in rows along their sides from above the pectoral fin to the base of the caudal fin. Sexual dimorphism amongst topminnows includes a longer median

fin length in males and a lemon-yellow color on the anterior base of the male's anal fin. The male's dorsal fin develops a deep orange over the entire fin, a slight orange tint to the caudal fin, and a bright yellow on the pelvic fins. Mature females have a sheath on the anterior base of the anal fin used to position eggs during spawning. There is no chromatic coloring in females (Thompson, 1980; 1999).

Topminnows' average lifespan is only 1 to 2 years. Individuals are relatively isolated and live their lives in a small physical area. The reproductive biology of the topminnow is not well studied, but current research shows the topminnow to be in reproductive condition from March through August, but spawning may also occur earlier (Peterson and Lopez, 2008). Spawning probably occurs only once in an individual's lifetime, but females produce several hundred eggs during that reproductive cycle (Thompson, 1999).

The topminnow prefers the brackish environment of *Spartina alterniflora* and *Juncus roemerianus* saltmarsh habitats. The fish are most common in small, shallow tidal meanders of the saltmarsh with salinities of 1–4 parts per thousand (ppt); while marsh habitats that appear appropriate, but had mean salinities of 17 ppt did not contain topminnows (Thompson, 1980; Peterson *et al.,* 2003). In addition to salinity, water depth, bank slope, and plant stem density may influence distribution of the topminnow. Topminnows are found in this type of saltmarsh habitat along the northern Gulf of Mexico from the Escambia River (Florida) to Galveston Bay (Texas) (Gilbert and Relyea, 1992).

Analysis of the Petition

We evaluated whether the petition presented the information indicated in 50 CFR 424.14(b)(2). The petition states the administrative measures recommended, and provides the scientific and common name of the species. The petition includes a detailed narrative justification for the recommended measure, including some information on numbers of the species, historical geographic occurrences of the species, and threats faced by the species. The petition provides information relevant to the status of the species as well as supporting references and documentation. The saltmarsh topminnow is taxonomically a species and thus is an eligible entity for listing under the ESA. The petition states that the saltmarsh topminnow is imperiled, extremely rare, and that the primary threat contributing to the saltmarsh topminnow's endangerment is habitat degradation. The petition also asserts that the species' biological constraints, such as small population size and its reproductive traits, increase its risk of extinction. The petition cites coastal development, levee and canal construction, and pollution as the threats cumulatively leading to the decline of saltmarsh habitat. According to the petition, at least three of the five causal factors in section 4(a)(1) of the ESA are, in combination, adversely affecting the continued existence of the saltmarsh topminnow, as follows: (A) present or threatened destruction, modification, or curtailment of its habitat or range; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors, particularly the fish's low reproductive rate.

Information on Extinction Risk and Status

The petition cites classifications made by NMFS, the states of Florida, Louisiana, and Mississippi, and NatureServe to support its assertion that the saltmarsh topminnow is imperiled. In 1991, NMFS added the saltmarsh topminnow to our Candidate Species List. In 2004, NMFS created the Species of Concern list (69 FR 19975; April 15, 2004) to encompass species for which we have some concerns regarding their status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA. Twenty-five candidate species, including the saltmarsh topminnow, were transferred to the Species of Concern list at that time because they were not being considered for ESA listing and were better suited for Species of Concern status due to some concerns and uncertainty regarding their biological status and threats. The Species of Concern status does not carry any procedural or substantive protections under the ESA. Our rationale for including the saltmarsh topminnow on the species of concern list included a potential population decline and threats from habitat alteration, dredging, and marsh erosion.

The state of Florida lists the saltmarsh topminnow on its species of special concern list, recognizing that the saltmarsh topminnow is particularly vulnerable ''to habitat modification, environmental alteration, human disturbance, or human exploitation which, in the foreseeable future, may result in its becoming a threatened species unless appropriate or protective management techniques are initiated or maintained.'' However, the petition cites the species' rarity in the waters of Florida, claiming the State's protective measures are insufficient to protect the species as a whole. Mississippi lists the species as a Species of Greatest Conservation Need in its ''Estuarine Bays, Lakes, and Tidal Streams'' habitat subtype. The state identifies five high and five medium level threats to this habitat subtype. However, this listing provides no legal protection to the species. Finally, Louisiana also lists the saltmarsh topminnow as a Species of Greatest Conservation Need, though this too offers no legal protection.

NatureServe classifies saltmarsh topminnow as ''vulnerable''. NatureServe's ''vulnerable'' classification category is given to species that are ''at moderate risk of extinction or elimination due to a restricted range, relatively few populations, recent and widespread declines, or other factors.'' NatureServe specifically cites ''patchy distribution within a small range along the coast of the Gulf of Mexico; may be declining due to pollution and habitat destruction; and local populations are relatively vulnerable to extirpation with a reduced capacity for re-colonization,'' as reasons for its vulnerable classification of the saltmarsh topminnow.

The petition also describes demographic factors specific to the saltmarsh topminnow that could be indicative of its extinction risk, for which the petition provides supporting information. These include a declining population trend with sparse individuals in some locations and a contraction of the historical range. The petition also asserts that small sizes of adult populations of the saltmarsh topminnow are contributing to the species' extinction risk, citing information on the species rarity or absence in reports of most fish studies of the northern Gulf of Mexico. The petition references the generally understood natural rarity of the species (*e.g.,* citing Lee *et al.,* 1980). However, rarity alone is not an indication that the saltmarsh topminnow faces an extinction risk that is cause for concern. A species' rarity could be cause for concern if the species was distributed in small, isolated populations, or had a very restricted geographic range and was subject to specific habitat degradation. Both of these conditions appear to be applicable to the saltmarsh topminnow. Peterson *et al.* (2003) cite the low relative abundance and patchy distribution of the species along with increased development pressure as reasons to quantify the habitat characteristics of the species. Rarity could also subject a species to heightened extinction risk if specific

stressors are negatively affecting its status and trends. Therefore, we must evaluate whether information indicates the saltmarsh topminnow's population has declined or continues to decline, and if so whether this suggests extinction risk that is cause for concern. Population decline can result in extinction risk that is cause for concern in certain circumstances, for instance if the decline is rapid and/or below a critical minimum population threshold and the species has low resilience for recovery from a decline (Musick, 1999). Information discussed above shows that decline for these species is possible, given the evidence of loss of its narrowly preferred habitat, though it is unclear how rapid or severe this decline has been.

The species' reliance on an apparently narrow range of habitat conditions makes it vulnerable to alterations and changes in marsh habitat. The petition states that coastal development, levee and canal construction, pollution, and other threats cumulatively imperil saltmarsh habitat, and consequently, the saltmarsh topminnow. Coastal development, levee and canal construction, pollution, and other threats may provide inferences about the status of marsh habitat and thus population status and trends of the saltmarsh topminnow, though such inferences may not be reliable in the absence of information regarding the level or distribution of marsh habitat over time, changes in development and construction practices, or changes in sampling design for the species that may affect abundance estimates independent of changes in a species' habitat and population. Wetland and marsh loss data described in the petition include NMFS' recent proposed ESA listing of largetooth sawfish (75 FR 25174): ''Wetland losses in the Gulf of Mexico region of the U.S. averages annual net losses of 60,000 acres (242.8 km^2) of coastal and freshwater habitats from 1998 to 2004 (Stedman *et al.,* 2008). Although wetland restoration activities are ongoing in this region of the U.S., the losses significantly outweigh the gains (Stedman *et al.,* 2008). These losses have been attributed to commercial and residential development, port construction (dredging, blasting, and filling activities), construction of water control structures, modification to freshwater inflows (Rio Grande River in Texas), and gas and oil related activities.'' Other citations include the Environmental Protection Agency's estimate that ''by 2050 one third of coastal Louisiana will have vanished into the Gulf of Mexico,'' and Thompson and Peterson's (2003) statement that ''coastal Louisiana is presently in the erosional phase of delta cycling, being accelerated, unfortunately in some areas, by many of man's activities in the coastal region.'' Thus, information about the threats to the species' habitat and inferences made about the species because of the alteration of its habitat may be indicators of the species' status and extinction risk. This is particularly true given the saltmarsh topminnow's preference for shallow water of low to moderate salinity saltmarsh environments, which in some cases has lost 40 percent of known acreage by conversion to developed land over a four decade time span (1950–1992; Peterson *et al.* 2003).

In summary, the petition and its supporting documentation provide information on the status of the species and its extinction risk especially in light of population demographic characteristics that suggests the species may meet the ESA's requirements for listing.

Information on Threats to the Species

The petition states that impacts and threats corresponding with three factors in section 4(a)(1) of the ESA are impacting the saltmarsh topminnow. Specifically, the petition states that losses of and threats to the species' saltmarsh habitat, inadequacy of mechanisms to protect the fish or its habitat, and the species' biological parameters including low rate of reproduction and limited individual ranges, are individually and synergistically causing imperilment of the saltmarsh topminnow.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The petition states ''the curtailment of its historic habitat range, and the threats to its current habitat * * * make the saltmarsh topminnow especially vulnerable to extinction.'' The petition acknowledges the general parameters of the historical range still apply (from Galveston Bay, TX to Escambia Bay, FL), but goes on to assert that this range has become spotty, stating scientists can no longer locate the species between Galveston Bay and southeastern Louisiana.

The petition also cites a number of reports on marsh loss in the Gulf of Mexico over varying periods of time ranging from the 1950s to future projections to 2050. Loss of marsh habitat ranges from 13 to 40 percent depending on time frame, expected future impacts, and area of the report. Additionally, the petition states ''scientists consider the topminnows that live off the western Florida panhandle to be 'threatened,' '' citing Gilbert and Relyea (1992).

Levee and canal construction is cited as an impediment to the topminnow gaining access to the vegetated, flooded marsh surface during high tide. The petition provides examples and notes that Federal and state governments have worked to remedy this situation by restoring natural water flows in a number of large river deltas with functional success being accomplished. Although functional success was accomplished in the petition's cited restoration projects, the petitioners claim ''mixed success'' because of political controversy, not scientific feasibility. Despite these restoration projects, overall marsh loss is continuing as described above.

A further factor affecting salt marsh habitat loss is the dock-side gaming industry of Mississippi and Louisiana. The success of the gaming industry in attracting tourists has led developers to create larger offshore casinos that drain wetlands. The amount of development has led to a situation where further construction cannot be undertaken without impacting wetlands. Compounding this problem is the human waste from these casinos polluting the water in remaining wetlands (NOAA CSC, 1999).

Another threat to the topminnow's habitat identified by the petition is oil and gas refining and the byproducts from such activities. The petition cites the Deepwater Horizon oil spill as a threat to habitat, and cites Cowan's (NY Times, 2010) concern for the spill's threat to the ''brackish water'' of the saltmarsh, in particular. Data are provided in the petition on the extent of damage caused by this unprecedented event to the marsh habitat of the topminnow, and on the estimated range impacted by the spill. The petition also discusses the long-term pollution that the oil industry causes to wetlands in general and to salt marshes in particular. The petition cites the Federal government and the state of Texas' acknowledgement that long-term oil refining activities have significantly polluted the coastal land straddling the Texas-Louisiana border, particularly the Port Arthur, Texas area.

A final threat to the species identified by the petition is land subsidence and sea level rise caused by petroleum development and climate change effects. We have no information in our files to contradict any of these above-listed threats.

In summary, the petition and its references present substantial information that indicates the present or threatened destruction, modification, or curtailment of habitat or range may be causing or contributing to an extinction risk for the saltmarsh topminnow that is cause for concern.

Inadequacy of Existing Regulatory Mechanisms

The petition argues that listing is warranted due to the inadequacy of existing regulatory mechanisms, stating that ''state and federal regulatory mechanisms have failed to protect the topminnow and its habitat.'' The petition cites the listing of the species under Louisiana, Florida, and Mississippi state programs, but states that due to the paucity of the species in Florida, its listing and protection there does not afford the species as a whole significant protection, while Louisiana and Mississippi listings carry no legal protections. Further, the Species of Concern listing by NMFS, while recognizing the potential for imperilment, provides no legal protection either.

The petition cites numerous holes in protection of the saltmarsh topminnow's habitat. These include the limitations of the Coastal Wetlands Planning, Protection, and Restoration Act, 16 U.S.C. 3951 *et seq.,* in slowing large-scale wetlands degradation; and the U.S. Army Corps of Engineers acknowledgement that the statute was not a broad enough approach to wetlands restoration to reverse the breakdown of a (wetland) ecosystem. Further, the petition notes the failure of the 1999 Louisiana Coastal Area Ecosystem Restoration Study to implement a comprehensive solution to wetland loss. The petition also cites the failure of the Federal and state governments to regulate the dock-side gaming industry. Wallis (2008) shows that economic considerations are often weighted heavily compared to environmental concerns in analyzing impacts of the dock-side gaming industry by Mississippi's coastal programs. Finally, the petition cites the inadequacy of the Clean Water Act in protecting wetlands from hypoxia inducing agricultural run-off pollution, due to its categorization as a non-point source, which exempts it from many permitting requirements.

In summary, the petition presents substantial scientific or commercial information indicating existing regulatory mechanisms may be inadequate to address threats of extinction to the saltmarsh topminnow.

Other Natural or Manmade Factors

The petition suggests that the saltmarsh topminnow is naturally vulnerable to increased risk of extinction, particularly because of some biological constraints such as small population size and reproductive traits. The petition argues that the saltmarsh topminnow is characterized by a very low rate of reproduction and limited range of individuals, which limits inter-population mixing. We have no information to refute these claims. The petition references the USFWS recognition that small population size increases extinction risk, and specifically referenced a candidate assessment for the Langford tree snail in support (*http://ecos.fws.gov/docs/candforms_pdf/r1/G0AI_I01.pdf*). The assessment for the Langford tree snail included a population estimate to support the conclusions made on the species small population size; however, no population estimate is given for the saltmarsh topminnow. Thus, it is unclear whether the saltmarsh topminnow is susceptible to the same reproductive limitations inherent with a small population size like the Langford tree snail. In summary, there is no scientific or commercial information available that suggests that low rate of reproduction in the saltmarsh topminnow may contribute to the species' risk of extinction, alone or in combination with other factors.

The petition also discusses human population growth as a factor that increases the saltmarsh topminnow's risk of extinction. The petition uses two references which estimate the expected increase in population along the coastal area of the Gulf of Mexico and cites Waddell and Clarke (2008) as support for its assertion that expanded human population growth will affect the saltmarsh habitat and thus the species, ''as the global population continues to increase and demographic shifts toward coastal areas persist, even greater pressures will be placed on nearshore resources to satisfy human desires for food, culture, tourism, recreation, and profit.'' The potential consequences of threats to the topminnow's preferred habitat are discussed above. Finally, the petition cites the cumulative and synergistic effects of the loss of habitat, low reproductive rates, and population isolation as factors contributing to the imperilment of the saltmarsh topminnow.

Summary of Section 4(a)(1) Factors

We conclude that the petition presents substantial scientific or commercial information indicating that a combination of three of the section 4(a)(1) factors: the present or threatened destruction, modification or curtailment of habitat, inadequate regulatory mechanisms, and other natural or manmade factors, may be causing or contributing to extinction risk for the saltmarsh topminnow.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, we conclude the petition presents substantial scientific information indicating the petitioned action of listing the saltmarsh topminnow as threatened or endangered may be warranted. Therefore, in accordance with section 4(b)(3)(B) of the ESA and the Service's implementing regulations (50 CFR 424.14(b)(2)), USFWS will commence a review of the status of the species and make a determination within 12 months of receiving the petition as to whether the petitioned listing is warranted. If listing the species is found to be warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule.

Finally, we conclude that the petition provides no justification for us to exercise our discretion to list the species under the emergency listing provisions of the ESA. While the BP Deepwater Horizon oil spill likely has impacted the saltmarsh topminnow or its habitat, petitioners failed to provide sufficient evidence or information to support a finding that the event caused or is continuing to cause a change in the species' status or habitat that requires immediate listing under the ESA to address a significant risk to the saltmarsh topminnow's well-being.

Information Solicited

To ensure the status review is based on the best available scientific and commercial data, we are soliciting information on whether the saltmarsh topminnow is endangered or threatened (see **DATES** and **ADDRESSES** sections above). Specifically, we are soliciting information in the following areas: (1) Historical and current distribution and abundance of the species throughout its range; (2) historical and current population trends; (3) information on life history, (4) information related to taxonomy of the species and closely related forms; (5) information on any current or planned activities that may adversely impact the species; (6) ongoing efforts to protect and restore the species and its habitat, and (7) management, regulatory, and enforcement information. We request

that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

If, after the status review, we determine that listing the saltmarsh topminnow is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the ESA), under section 4 of the ESA, to the maximum extent prudent and determinable at the same time we propose to list the species. Therefore, within the geographical range currently occupied by the saltmarsh topminnow, we request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species'';

(2) Where such physical and biological 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 ESA.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office or the USFWS Panama City Ecological Office (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 21, 2011.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

Dated: August 5, 2011.

Samuel D. Rauch III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 100819383–0386–01]

RIN 0648–BA18

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Limited Access Privilege Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement Amendment 93 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). This proposed rule would amend the Bering Sea and Aleutian Islands Amendment 80 Program to modify the criteria for forming and participating in a harvesting cooperative. This action is necessary to encourage greater participation in harvesting cooperatives, which enable members to more efficiently target species, avoid areas with undesirable bycatch, and improve the quality of products produced. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan, and other applicable law.

DATES: Comments must be received no later than September 9, 2011.

ADDRESSES: Send comments to James W. Balsiger, Ph.D., Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–BA18, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Fax:* (907) 586–7557, Attn: Ellen Sebastian.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 93, the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA)—collectively known as the Analysis—for this action are available from the Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, (907) 586–7091.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone off Alaska are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Amendment 80 to the BSAI FMP implemented the Amendment 80 Program. Regulations implementing Amendment 80 were published on September 14, 2007 (72 FR 52668). These regulations are located at 50 CFR part 679.

Background

The Amendment 80 program is commonly known as a limited access privilege program (LAPP). Eligible fishery participants may receive exclusive access to specific fishery resources if certain conditions are met. Under the Amendment 80 Program, NMFS issues a quota share (QS) permit to a person holding the catch history of an original qualifying non-American Fisheries Act (AFA) trawl catcher/processor that met specific criteria designated by Congress under the Capacity Reduction Program (CRP) (Pub. L. 108–447). NMFS determined that 28 vessels met the criteria specified in the CRP. These vessels comprise the originally qualifying Amendment 80 vessels. NMFS determined the amount of QS issued based on the catch history of six Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) in the Bering Sea and Aleutian Islands Management Area (BSAI), from 1998 through 2004, derived from the 28 originally

qualifying non-AFA trawl catcher processors.

A QS permit details the total number of QS units for each of the six allocated Amendment 80 species. A QS permit may not be subdivided, and QS allocations of specific QS species may not be transferred or otherwise reassigned. Once NMFS issues a QS permit, it may not be transferred separately from the originally qualifying Amendment 80 vessel to which it has been assigned, except under specific conditions.

NMFS may issue a QS permit based on the catch history of each of the 28 originally qualifying Amendment 80 vessels to either the owner of the originally qualifying Amendment 80 vessel, the owner of a replacement vessel if the original qualifying Amendment 80 vessel has been lost, or the holder of the License Limitation Program (LLP) license issued to the originally qualifying Amendment 80 vessel The Amendment 80 Program defined a specific LLP license for each originally qualifying Amendment 80 vessel to which a QS permit may be assigned in cases where a vessel has been lost. Additional details on the transfer of QS permits to LLP licenses is provided in the final rule to implement Amendment 80 and are not repeated here (September 14, 2007; 72 FR 52668). NMFS issued QS to the owner of the Amendment 80 vessel in most cases. As of the publication of this proposed rule, NMFS has issued QS permits based on the catch history of 27 of the 28 originally qualifying Amendment 80 vessels. One originally qualifying Amendment 80 vessel owner did not submit an application as of the publication date of this rule.

Under the Amendment 80 Program, NMFS allocates a specific portion of the BSAI total allowable catch (TAC) to the Amendment 80 sector for each of the six defined Amendment 80 species. NMFS allocates the remainders of the TACs for Atka mackerel, Pacific cod, Pacific ocean perch, and yellowfin sole to non-Amendment 80 vessels participating in the BSAI trawl fisheries. In addition, NMFS allocates a specific portion of the allowable bycatch of BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab to the Amendment 80 sector. This allowable bycatch is commonly known as prohibited species catch (PSC) because these species may not be retained, but are known to be incidentally taken in BSAI trawl fisheries. NMFS will limit groundfish fishing in the BSAI if the PSC limit for a species is reached. The specific groundfish species for which NMFS issues a QS permit, and the PSC species assigned to the Amendment 80 sector, are shown in Table 1.

TABLE 1—GROUNDFISH AND PSC SPECIES ASSIGNED TO THE AMENDMENT 80 PROGRAM

Groundfish species assigned to the Amendment 80 sector	PSC species assigned to the Amendment 80 sector
Aleutian Islands Pacific ocean perch.	Pacific halibut.
Atka mackerel	Zone 1 Bristol Bay red king crab.
Flathead sole	Zone 1 *Chionoecetes opilio* crab.
Pacific cod	Zone 2 *C. opilio* crab.
Rock sole	Zone 1 *C. bairdi* crab.
Yellowfin sole	Zone 2 *C. bairdi* crab.

The specific amounts of the TAC and PSC limits assigned to the Amendment 80 sector and the non-Amendment 80 BSAI trawl fishery on an annual basis are defined in regulations at 50 part 679 and are not repeated here (see Tables 33, 34, and 35 to part 679). The amount of the TAC and PSC assigned to the Amendment 80 sector is further divided between those who participate in Amendment 80 harvesting cooperatives, and those who participate in the ''Amendment 80 limited access fishery.''

Generally, the Amendment 80 Program is intended to facilitate the formation of cooperatives. As described in Section 2 of the Analysis, cooperative management improves fishery management, because Amendment 80 participants who join a cooperative receive cooperative quota (CQ), which are exclusive harvest privileges for a portion of these fishery resources. The allocation of CQ allows vessel operators to make operational choices to improve fishing practices and reduce discards of fish, because the incentives to maximize catch rates to capture a share of the available catch are removed. Cooperatives fishing under an exclusive harvest privilege can tailor their operations to more efficiently target species, avoid areas with undesirable bycatch, and improve the quality of products produced. Participants in the limited access fishery do not receive an exclusive harvest allocation, and may have little incentive to coordinate harvest strategies if they perceive a benefit by competing with other participants in a race for fish.

A person who chooses to join a cooperative must designate the catch derived from his QS to the cooperative, the specific vessels that will be fishing for that cooperative, and the LLP licenses assigned to each designated vessel. For example, a person wishing to participate in an Amendment 80 cooperative may assign all, or a portion, of the QS permits held by that person to an Amendment 80 cooperative by November 1 of each year to be eligible to fish in that cooperative for the following calendar year. Once a person assigns a QS permit, Amendment 80 vessel, or LLP license to a cooperative for a year, that person cannot reassign that QS permit, vessel, or LLP license to another cooperative or to the limited access fishery for that same calendar year. A person can also assign QS permits to the Amendment 80 limited access fishery if that person is unable or unwilling to meet the requirements established by an Amendment 80 cooperative. NMFS assigns any QS permits, vessels, and LLP licenses not assigned to a cooperative to the Amendment 80 limited access fishery by default.

The proportion of the TAC that is assigned to an Amendment 80 cooperative is based on the amount of QS held by the members of the cooperative relative to the total Amendment 80 QS pool for a given groundfish fishery. For example, if a cooperative was comprised of members holding QS permits with a total number of QS units equaling 40 percent of the Amendment 80 QS pool in the yellowfin sole fishery, that cooperative would receive CQ to harvest 40 percent of the annual total allowable catch (TAC) of yellowfin sole that is assigned to the Amendment 80 sector for that year. A similar calculation is made for all other Amendment 80 species and allocation of PSC limits. Any catch of groundfish or PSC species that is assigned CQ is debited from a cooperative's CQ account. NMFS allocates TAC and PSC limits first to cooperatives. The remaining TAC and PSC limits after allocation to cooperatives is available collectively to the participants in the Amendment 80 limited access fishery.

The Proposed Action

The proposed action would result in two changes to the Amendment 80 Program. First, it would reduce the minimum number of persons and licenses required to form a harvesting cooperative. Second, it would require that a person holding multiple QS permits, Amendment 80 vessels, and LLP licenses assign all those QS permits, vessels, and LLP licenses to either one or more cooperatives, or the limited access fishery, but not to both a cooperative and the limited access fishery. If approved, this second provision would not be applicable until

the first fishing year 2 years after the effective date of the final rule.

Modifying Cooperative Formation Standards

The first aspect of this proposed action would allow a cooperative to form with a minimum of two unique persons holding a total of at least seven QS permits. The current requirement is that a minimum of three unique persons and nine QS permits must be assigned to a cooperative. Reducing the number of unique persons and number of QS permits could provide additional opportunities for QS holders to establish cooperative relationships that could reduce the number of participants engaged in the race for fish.

Since the implementation of the Amendment 80 Program in 2008, some Amendment 80 sector participants have expressed concern that the current cooperative formation requirements could impede participants from joining a cooperative and receiving an exclusive allocation of Amendment 80 species. Most participants in the Amendment 80 sector have successfully established a cooperative in the first 3 years of the program. However, some participants have expressed concern that, over the long term, cooperative formation standards may put them at a disadvantage.

Section 2.4 of the Analysis prepared for this action notes that vessel owners would be likely to have weakened negotiating leverage when seeking membership in a cooperative if they cannot be competitive in the limited access fishery and if fishing options in the Gulf of Alaska would not be viable. Participants may find it difficult to receive the benefits of cooperative management if they cannot reach agreement on negotiated terms, if the limited access fishery is not an economically viable option, or if members of a cooperative are able to derive some benefit from forcing an entity into the limited access fishery.

Relaxing cooperative formation standards either by reducing the number of QS permits that must be assigned or the number of unique vessel owners required could: (1) Provide additional opportunities to QS holders to form cooperatives because more relationships are possible; (2) diminish the negotiating leverage of vessel owners who may be necessary to meet the threshold requirements under more stringent cooperative formation standards; (3) reduce the potential risk of any one company being unable to negotiate settlement and be able to fish only in the limited access fishery; and (4) reduce the incentive for members of a cooperative to attempt to create conditions that are unfavorable for certain fishery participants to form a cooperative.

Section 2.4 estimates that there are approximately nine unique persons in the Amendment 80 sector holding 27 QS permits. Most, but not all, of these persons have joined a cooperative. The Alaska Seafood Cooperative (AKSC), formerly known as the Best Use Cooperative (BUC), includes most of the participants in the Amendment 80 sector. It is comprised of seven unique persons holding 17 to 18 QS permits annually during 2008 through 2011. The Amendment 80 limited access fishery had two to four unique persons holding seven to nine QS permits annually during 2008 through 2010. Recent business transactions in the Amendment 80 sector have resulted in a greater consolidation in the ownership of the Amendment 80 sector. In 2010, one of the QS permits that had been assigned to the limited access fishery was transferred to a participant in AKSC. In 2011, all Amendment 80 QS holders participated in a cooperative, with most participants joining AKSC. A second cooperative representing nine QS permits held by four unique persons was assigned to the Alaska Groundfish Cooperative (AGC). Two of the members of AGC own multiple QS permits and participate in both the AKSC and AGC.

Conditions in the Amendment 80 sector suggest that cooperative formation may continue to be challenging even though two cooperatives formed in 2011. For example, some AKSC members have raised concerns that accepting members into a cooperative could adversely affect the cooperative's internal management agreements and expose existing members to a potentially increased risk of enforcement actions under joint and several liability provisions because of perceived concerns about the past enforcement record of some Amendment 80 sector participants.

The Council considered extensive testimony and input from the Amendment 80 sector during the development of the proposed action, as well as a review of the suite of decisions that affect cooperative formation and the potential incentives to include or exclude a member from a cooperative. Section 2.3.8 of the Analysis describes these factors. The Council developed the alternatives listed below:

- Alternative 1: Status quo. A minimum of three unique QS holders holding at least nine QS permits are required to form a cooperative.
- Alternative 2: Reduce the number of unique QS holders required to form a cooperative from the existing three QS holders to two or one unique QS holder.
- Alternative 3: Reduce the number of QS permits required to form a cooperative from the existing nine permits to eight, seven, six, or three permits.
- Alternative 4: Reduce both the number of unique QS holders and the number of QS permits required to form a cooperative (combination of Alternatives 2 and 3 above).
- Alternative 5: Allow a cooperative to form with a minimum of three unique QS holders holding at least nine QS permits (status quo), or a single or collective group of entities that represent 20 percent, 25 percent, or 30 percent of the sector QS.
- Alternative 6: Require that a cooperative accept all persons who are otherwise eligible to join a cooperative subject to the same terms and conditions as all other members.

Section 2.4 of the Analysis notes that less strict cooperative formation standards might provide greater opportunities for cooperatives to form, in general, and greater opportunities for any specific participant to find arrangements that allow them to participate in a cooperative. Overall, Section 2.4 of the Analysis concludes that relaxing the cooperative formation standard would provide an increased likelihood that a greater proportion of the TAC assigned to the Amendment 80 sector is harvested under cooperative management.

Ultimately, the Council chose Alternative 4 and the option for a minimum of two unique persons and seven QS permits. The Council chose an alternative that would provide some additional flexibility to the Amendment 80 sector to form cooperatives, without requiring drastic changes from the status quo structure of the most established cooperative, AKSC. The Council noted its preferred alternative would require more than one company to coordinate operations to receive an exclusive annual harvest allocation. The Council noted that maintaining a multi-company cooperative structure would extend the Council's overall goal of enhancing coordination among a variety of different industry participants.

Section 2.3.8 of the Analysis notes that the alternatives considered, including the Council's preferred alternative that comprises the proposed action, are consistent with the overall goals of the Amendment 80 Program, including the goal of allocating groundfish species to harvesting cooperatives to encourage fishing practices with lower discard rates and to improve the opportunity for increasing

the value of harvested species while lowering costs. The Council noted that modifying the cooperative standards originally selected under Amendment 80 to reflect the changing negotiating positions of various industry participants was responsive to the best available information on current fishery conditions. Public input during the Council's consideration of the proposed action generally supported the reduced cooperative formation standard as a mechanism to provide additional opportunities for cooperative formation. NMFS agrees with the Council's rationale for this proposed change. This proposed rule would not modify the specific species that are allocated or the amount of the TAC allocated to the Amendment 80 Program.

Requiring QS To Be Assigned to Cooperatives or the Limited Access Fishery

The second modification under this proposed action would require that a person assign all QS permits either to a cooperative or to the limited access fishery, but not to both during the same calendar year. If this provision is approved, it would not apply until the first fishing year 2 years after a final rule, if implemented, becomes effective.

Excluding a person from cooperative membership could benefit a cooperative, or specific members of a cooperative, who choose to participate in both a cooperative and the limited access fishery. For example, if a cooperative member who holds multiple QS permits and vessels can assign one vessel and QS permit to the limited access fishery and another vessel and QS permit to a cooperative, that member could harvest more fish in the limited access fishery than would be derived from their QS if it were assigned to a cooperative. A person participating in both a cooperative and the limited access fishery has an incentive to exclude participants in the limited access fishery from joining a cooperative or creating an additional cooperative. For example, a person participating in a cooperative and the limited access fishery could seek to exclude a person from fishing in a cooperative if the person to be excluded was unlikely to be able to join another cooperative. Under that scenario, the person excluded from a cooperative could be forced into the Amendment 80 limited access fishery. If the person participating in the cooperative also assigned a vessel to the Amendment 80 limited access fishery that was capable of effectively competing against the other Amendment 80 limited access fishery participants, that person could maximize their catch in a race for fish. Under that scenario, a person with participation in both an Amendment 80 cooperative and the limited access fishery would have little incentive to allow a person to join a cooperative because they would lose access to fish that would otherwise be available in the Amendment 80 limited access fishery. Data from the first three years of the Amendment 80 Program indicate that one vessel owner with multiple vessels and QS permits has chosen to participate in both a cooperative and the limited access fishery. During the development of Amendment 93, participants in the limited access fishery testified that they have sought to join the existing cooperative (at that time, the Best Use Cooperative), but were unable to do so. The Council determined, and NMFS agrees, that this provision would reduce the incentive for a cooperative member to exclude another person from forming a cooperative in order to force them into a race for fish in the limited access fishery.

The requirement that a vessel owner and QS holder assign all QS permits and vessels to either a cooperative or the limited access fishery would not apply until the first fishing year 2 years after the final rule would be effective. For example, if the final rule became effective in October 2011, this requirement would not apply until the 2014 fishing year, but QS holders would have to assign all QS permits and vessels to one or more cooperatives or to the limited access fishery by the Amendment 80 annual cooperative application deadline of November 1, 2013. The proposed rule text implementing this provision uses the 2014 fishing year as the first year in which this provision would be applicable because, it assumes the final rule for this action would be published by the end of 2011. The Council determined, and NMFS agrees, that this 2-year delay would provide vessel owners and QS holders time to establish relationships to ensure that all QS permits and vessels could be assigned to either the limited access fishery or a cooperative. The 2-year delay would allow vessel owners to ensure that they are well-coordinated with other participants in the fishery and all of their QS permits can be assigned to either one or more cooperative, or the limited access fishery. Some industry participants have expressed concerns that the ''all-in'' nature of this requirement could create contentious and complicated cooperative negotiations if vessel owners are unable to enter all their vessels into a cooperative. If this provision becomes effective, NMFS would enforce this provision by not allowing the owner of multiple QS permits or vessels to assign QS permits or vessels to one or more cooperatives and the Amendment 80 limited access fishery during the annual cooperative application process.

Conceivably, if a vessel owner is not able to assign all vessels or QS permits to a cooperative, that vessel owner would be required to assign those vessels or permits to the limited access fishery. Based on the demonstrated ability of the Amendment 80 participants to establish cooperatives, this scenario is unlikely. In 2011, both Amendment 80 cooperatives were comprised of vessel owners with a wide range of vessels. Their cooperative contracts govern the specific obligations that each member has and ensures that overall cooperative harvests meet those requirements. It is likely that these cooperative relationships will continue. The 2-year timeframe would provide the industry time to structure their cooperative contracts to incorporate ''all-in'' provisions necessary to allow owners of multiple vessels and QS permits to maintain membership in a cooperative.

Expected Effects of the Proposed Action

The RIR describes the predicted effects of the proposed action on harvesters, processors, communities, management and enforcement, consumers, and the nation (see **ADDRESSES**). Only the effects of the proposed action on harvesters are described here. Overall, the proposed action would be expected to increase the potential for cooperative formation. Vessels fishing under a cooperative would realize the benefits of LAPP management, including a strong incentive to reduce the race for fish. Based on a preliminary review of the first 3 years of the Amendment 80 Program (2008 through 2010) and past experience with cooperative-based management in other LAPPs (*e.g.,* AFA, Central GOA Rockfish Program, and BSAI Crab Rationalization Program), participation in a cooperative is likely to allow optimization of harvest rates for product recovery and quality, reduce incentives to operate in adverse weather conditions, facilitate reductions of bycatch, and streamline operations to maximize profits.

Recordkeeping and Reporting Requirements

NMFS would continue to oversee the submission of cooperative applications and the issuance and transfer of CQ. The

proposed rule would not change the information required to be submitted by cooperative applicants.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with Amendment 93, the FMP, the MSA, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). Copies of the IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reasons why it is being considered, and a statement of the objectives of, and the legal basis for, this action are contained in the **SUMMARY** section of the preamble and are not repeated in detail here. The IRFA for this proposed action describes the reasons why this action is being proposed; describes the objectives and legal basis for the proposed rule; describes and estimates the number of small entities to which the proposed rule would apply; describes any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; identifies any overlapping, duplicative, or conflicting Federal rules; and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the MSA and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. A summary of that analysis follows.

Rationale, Objectives, and Legal Basis of the Proposed Rule

The IRFA describes the reasons why this action is being proposed, describes the objectives and legal basis for the proposed rule, and discusses both small and other regulated entities to adequately characterize the fishery participants. The MSA is the legal basis for the proposed rule. The objectives of the proposed rule are to facilitate cooperative formation among the Amendment 80 sector to ensure that fishery participants can realize the intended benefits of fishing under an exclusive harvest privilege. The proposed rule would accomplish this goal by reducing the minimum number of persons and licenses required for cooperative formation under the Amendment 80 Program. NMFS expects the proposed action to provide additional opportunities for cooperative formation among participants in the Amendment 80 sector.

Number of Small Entities To Which the Proposed Rule Would Apply

The directly regulated entities under this proposed rule are holders of Amendment 80 QS. For purposes of an IRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied, and continues to apply, SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. Even if additional catcher/processors would have been identified as small entities under a revised small-entity size classification, NMFS would have analyzed the effect on small entities using the same methods that were used in the IRFA prepared for the proposed rule. NMFS considered the effects of the proposed rule and attempted to reduce costs to all directly regulated entities regardless of the number of small entities.

The IRFA estimates that 28 non-AFA trawl catcher/processors could generate Amendment 80 QS, based on the provisions of the Amendment 80 Program. Those persons who apply for and receive Amendment 80 QS are eligible to fish in the Amendment 80 sector, and those QS holders would be directly regulated by the proposed action. Based on the known affiliations and ownership of the Amendment 80 vessels, all but one of the Amendment QS holders would be categorized as large entities for the purpose of the RFA under the principles of affiliation, due to their participation in a harvest cooperative or through known ownership of multiple vessels, co-ownership and ''shares'' ownership among vessels, and other economic and operational affiliations. Thus, this analysis estimates that only one small entity would be directly regulated by the proposed action. It is possible that this one small entity could be linked by company affiliation to a large entity, which may then qualify that entity as a large entity, but complete information is not available to determine any such linkages.

The estimate of the number of small entities is conservative. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the RIR prepared for this action (see **ADDRESSES**).

Impacts on Directly Regulated Small Entities

The proposed action would modify the cooperative formation standards and requirements for assigning QS and Amendment 80 vessels to either a cooperative or the limited access fishery. The overall impact to small entities is expected to be positive. Impacts from the proposed rule would accrue differentially (*i.e.,* some entities could be negatively affected and others positively affected). The Council considered an extensive range of alternatives and options as it designed and evaluated the potential for changes to the Amendment 80 sector, including the ''no action'' alternative.

Six alternative approaches for modifying cooperative formation criteria were considered. Alternative 1: Status quo. A minimum of three unique QS holders holding at least nine QS permits are required to form a cooperative. Alternative 2: Reduce the number of unique QS holders required to form a cooperative from the existing three QS holders to two or one unique QS holder. Alternative 3: Reduce the number of QS permits required to form a cooperative from the existing nine permits to eight, seven, six, or three permits. Alternative 4: Reduce both the number of unique QS holders and the number of QS permits required to form a cooperative (combination of Alternatives 2 and 3 above). Alternative 5: Allow a cooperative to form with a minimum of

three unique QS holders holding at least nine QS permits (status quo), or a single or collective group of entities that represent 20 percent, 25 percent, or 30 percent of the sector QS. Alternative 6: Require that a cooperative accept all persons who are otherwise eligible to join a cooperative subject to the same terms and conditions as all other members. The Council recommended Alternative 4, reducing the number of unique QS holders to two unique persons and reducing the number of QS permits required to form a cooperative to seven QS permits, as its preferred alternative.

Two alternative approaches were considered for the QS and vessel assignment provision. Alternative 1: status quo. QS holders with multiple QS permits and vessels may assign those QS permits and vessels to one or more cooperatives and the limited access fishery. Alternative 2: QS holders with multiple QS permits and vessels may assign those QS permits and vessels to one or more cooperatives or the limited access fishery, but not both. If approved, this alternative would be effective two years after the effective date of the final rule.

Collectively, the alternatives and options considered under these two proposed actions provided a broad suite of alternatives from which the Council chose to modify the factors affecting cooperative formation.

Compared with the status quo, the proposed action selected by the Council minimizes the adverse economic impacts on the directly regulated small entity. The alternatives under consideration in this proposed rule would be expected to provide greater opportunity for cooperative formation among the various industries. In no case are these combined impacts expected to be substantial. Alternative 4 of action 1, with the two unique persons and seven QS permit option, would not be expected to adversely affect the existing Amendment 80 cooperatives, but could provide additional cooperative formation opportunities for participants in the Amendment 80 limited access fishery. The proposed QS assignment provision would reduce the incentive for owners of multiple vessels to exclude a person from a cooperative. This proposed provision would be expected to enhance the likelihood of cooperative formation.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Existing recordkeeping and reporting requirements necessary to apply to form an Amendment 80 cooperative would not be modified.

Duplicate, Overlapping, or Conflicting Federal Rules

No Federal rules that might duplicate, overlap, or conflict with this proposed action have been identified.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 3, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447

2. In § 679.91, paragraphs (h)(3)(ii), (h)(3)(iii), and (h)(3)(xii) are revised to read as follows:

§ 679.91 Amendment 80 Program annual harvester privileges.

* * * * *

(h) * * *

(3) * * *

(ii) What is the minimum number of Amendment 80 QS permits that must be assigned to an Amendment 80 cooperative to allow it to form?	Any combination of at least seven Amendment 80 QS permits which would include Amendment 80 LLP/QS licenses.
(iii) How many Amendment 80 QS holders are required to form an Amendment 80 cooperative?	At least two Amendment 80 QS holders each of whom may not have a ten percent or greater direct or indirect ownership interest in any of the other Amendment 80 QS holders.

* * * * * * *

(xii) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to an Amendment 80 cooperative and the Amendment 80 limited access fishery?	No, an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel assigned to an Amendment 80 cooperative may not be assigned to the Amendment 80 limited access fishery for that calendar year. Prior to the 2014 fishing year, a person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels is not required to assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the same Amendment 80 cooperative or the Amendment 80 limited access fishery. Starting with the 2014 fishing year and thereafter, a person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels must assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to either one or more Amendment 80 cooperatives, or the Amendment 80 limited access fishery.

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[FR Doc. 2011–20191 Filed 8–9–11; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 0812081573–1423–02]

RIN 0648–AX47

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations implementing Amendment 30 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). This proposed rule would amend the Bering Sea/Aleutian Islands Crab Rationalization Program (CR Program) to modify procedures for producing and submitting documents that are required under the Arbitration System to resolve price, delivery, and other disputes between harvesters and processors. This action is necessary to improve the quality and timeliness of market information used to conduct arbitration proceedings. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments must be received no later than September 9, 2011.

ADDRESSES: Send comments to Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AX47,'' by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov*.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 30, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and the categorical exclusion prepared for this action—as well as the Environmental Impact Statement (EIS) prepared for the CR Program—may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov*. NMFS determined that this proposed action was categorically excluded from the need to prepare an environmental assessment under the National Environmental Policy Act.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS Alaska Region by e-mail to *OIRA_Submission@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Forrest R. Bowers, 907–586–7240.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act. Amendments 18 and 19 to the FMP implemented the CR Program. Regulations implementing the FMP, including the CR Program, are located at 50 CFR part 680.

Background

Under the CR Program, NMFS issued quota share (QS) to persons based on their qualifying harvest histories in the BSAI crab fisheries during a specific time period. Each year, the QS issued to a person yields an amount of individual fishing quota (IFQ), which is a permit providing an exclusive harvesting privilege for a specific amount of raw crab pounds, in a specific crab fishery, in a given season. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, a person holding QS equaling 1 percent of the QS pool in a crab fishery would receive IFQ to harvest 1 percent of the annual total allowable catch (TAC) in that crab fishery. Catcher processor license holders were allocated catcher processor vessel owner (CPO) QS for their history as catcher processors; and catcher vessel license holders were issued catcher vessel owner (CVO) QS based on their history as a catcher vessel.

Under the CR Program, 97 percent of the initial allocation of QS was issued to vessel owners as CPO or CVO QS; the remaining 3 percent was issued to vessel captains and crew as CPC or CVC QS based on their harvest histories as crew members onboard crab fishing vessels. Ninety percent of the annual CVO IFQ is issued as A shares, or Class A IFQ, which are subject to landing requirements in specific geographic regions, and must be delivered to a processor holding unused individual processor quota (IPQ). The remaining 10 percent of the annual CVO IFQ is issued as B shares, or Class B IFQ, which may be delivered to any processor and are not subject to regionalization. CPO, CPC, and CVC IFQ are not subject to regionalization and are not required to be matched with a processor holding IPQ.

NMFS also issued processor quota shares (PQS) to processors based on their qualifying processing histories in the BSAI crab fisheries during a specific time period. These PQS yield annual IPQ, which represent a privilege to receive a certain amount of crab harvested with Class A IFQ. IPQ are issued in an amount equivalent to the Class A IFQ, creating a one-to-one correspondence between Class A IFQ and IPQ. Prior to the start of a crab fishing season, Class A IFQ and IPQ holders match their shares with one another, thereby determining their markets for the coming year. These matches may be modified during the crab season, but both parties must consent to any modifications.

Arbitration System

The CR Program requires holders of Class A IFQ to deliver their catch to processors holding IPQ for a specific crab fishery within a specific geographic region. Potential disputes among harvesters and processors during price and delivery negotiations can occur, and the share matching requirements can exacerbate these disputes. To fairly address potential price and delivery disputes that may arise between Class A IFQ holders and IPQ holders, the CR

Program includes an arbitration system. Disputes are most likely to occur in cases where the Class A IFQ holder is not affiliated with an IPQ holder through common ownership or control and the IPQ holder will not consent to modification of the preseason share matching, thereby allowing the IPQ holder to dictate prices or other conditions without the ability of the Class A IFQ holder to move to an alternative market. Class A IFQ holders who are unaffiliated, or independent, of IPQ holders are commonly known as unaffiliated Class A IFQ holders. Conversely, Class A IFQ holders who are affiliated with IPQ holders through common ownership and control are known as affiliated Class A IFQ holders. Affiliated Class A IFQ holders are not eligible to use the arbitration system to settle price or other disputes. Affiliated Class A IFQ holders do not require an arbitration system, because they are integrated with IPQ holders and do not have distinct and potentially adversarial negotiating positions as may be the case with unaffiliated Class A IFQ and IPQ holders.

The arbitration system allows unaffiliated Class A IFQ holders to initiate an arbitration proceeding in the event of a dispute to allow an independent third party to provide a review of harvester and processor negotiation positions and provide an independent and binding resolution to issues under dispute. Regulations describing the arbitration system are found at 50 CFR 680.20. An extensive discussion of the components of the arbitration system is found in the preambles to the proposed rule (September 1, 2004; 69 FR 53397) and final rule (March 2, 2005; 70 FR 10174) that implemented the CR Program, as well as in the final EIS prepared for the Program, and is not reiterated here (see **ADDRESSES**).

To facilitate arbitration proceedings, the arbitration system establishes a series of contractual requirements that CVO QS, PQS, Class A IFQ, and IPQ holders must meet that dictate how the arbitration system will function. Regulations require that all unaffiliated CVO QS and Class A IFQ holders join an Arbitration Organization (AO). Similarly, affiliated CVO QS and Class A IFQ holders are required to join a separate AO. PQS and IPQ holders are required to join a third AO. Regulations further require that these three AOs enter into a series of contracts that will allow the arbitration system to function. Although affiliated Class A IFQ and IPQ holders must join AOs, the primary role of the arbitration system is to facilitate negotiations among the unaffiliated Class A IFQ and IPQ holders. Therefore, this proposed rule would primarily affect unaffiliated Class A IFQ and IPQ holders. For clarity in this proposed rule, the AO representing unaffiliated CVO QS and Class A IFQ holders will be called the unaffiliated Class A IFQ arbitration organization, the AO representing affiliated CVO QS and Class A IFQ holders will be called the affiliated Class A IFQ arbitration organization, and the AO representing PQS and IPQ holders will be called the IPQ arbitration organization.

Under the arbitration system, all AOs must establish contracts to hire an independent third-party data provider, who will provide up-to-date information on matches between Class A IFQ and IPQ holders for crab deliveries and contracts to hire independent experts to facilitate arbitration proceedings. Only the unaffiliated Class A IFQ AOs and the IPQ AOs can enter into contracts to hire: (1) A market analyst, who provides a pre-season market report of likely market conditions for each crab fishery to aid in price negotiations and arbitrations; (2) a formula arbitrator, who prepares a non-binding price formula that describes the historic division of first whole-sale values among harvesters and processors that can be used in price negotiations and arbitrations; and (3) a contract arbitrator, who reviews the positions of the parties during an arbitration proceeding and issues a binding decision based on a last-best offer form of arbitration.

Under current regulations, contracts with the market analyst, formula arbitrator, and contract arbitrator must be established by June 1 and can only be established by the mutual agreement of unaffiliated Class A IFQ AOs and IPQ AOs. ''Mutual agreement,'' as defined in 50 CFR 680.2, requires the consent and agreement of unaffiliated Class A IFQ AOs that represent an amount of unaffiliated Class A IFQ equal to more than 50 percent of all the unaffiliated Class A IFQ in a fishery, and IPQ AOs that represent an amount of IPQ equal to more than 50 percent of all the IPQ in a fishery based upon the Annual Arbitration Organization Reports. This mutual agreement requirement is intended to ensure that the majority of the unaffiliated Class A IFQ and IPQ holders reach agreement on the contracts that will provide necessary services for the functioning of the arbitration system, but avoid the potential that the process could be compromised by the inability of all unaffiliated Class A IFQ or IPQ holders to reach unanimity on the contracts.

During an arbitration proceeding, the contract arbitrator is required to consider the market report and the non-binding price formula when considering the offers provided by the parties to the arbitration proceeding. Because the market report and the non-binding price formula play a central role in the decision-making process of the contract arbitrator, the information used in their preparation and the timing of their production can affect their utility and importance.

Need for Proposed Action

As the CR Program has progressed, it has become clear to the unaffiliated Class A IFQ and IPQ holders—as well as to the market analyst, the formula arbitrator, and the contract arbitrator—that certain aspects of the existing requirements for the timing and content of the market report and non-binding price formula limit the effectiveness of the arbitration system. This proposed rule would modify four aspects of the arbitration system to improve its effectiveness by: (1) Allowing AOs to mutually agree to establish contracts that would forgo the preparation of market reports and non-binding price formulas if a CR Program crab fishery is unlikely to (and does not) open; (2) modifying the timeline for release of the non-binding price formula for the western Aleutian Islands golden king crab (WAG) and eastern Aleutian Islands golden king crab (EAG) fisheries; (3) modifying the information used in the market report and allowing AOs to mutually agree to modify the timing for release of the market report in each CR Program fishery; and (4) clarifying the authority of the AOs, market analyst, formula arbitrator, contract arbitrators, and third-party data provider to adopt additional arbitration system procedures that are not in conflict with arbitration system regulations. The need for and effect of each of these proposed actions are described in greater detail below.

Action 1: Allow AOs To Forgo Preparation of Market Reports and Non-Binding Price Formulas if a Crab Fishery Is Unlikely To and Does Not Open

This proposed action would allow AOs representing unaffiliated Class A IFQ holders and IPQ holders to mutually agree that when a crab fishery is unlikely to open, neither a market report nor a non-binding formula would be prepared for the fishery. If mutual agreement is reached, the proposed action would require the AOs representing unaffiliated Class A IFQ holders and IPQ holders to include provisions in the contracts with the market analyst and formula arbitrator that would reflect the mutual agreement of the AOs to forgo preparation of a

market report and non-binding price formula for the fishery; require preparation of the market report and non-binding price formula in the event that an opening is later announced for the fishery; and specify a timeline for the production of the market report and non-binding price formula, which must occur before June 30.

This proposed action would allow the AOs, and, by extension, the unaffiliated Class A IFQ and IPQ holders who are members of the AOs and who pay the costs for producing these reports, the option to forgo incurring expenses associated with the production of those reports when it appears unlikely that a fishery will open. The potential cost savings to the AOs could range from a few thousand to several tens of thousands of dollars. Additional details on the potential cost savings are provided in the analysis prepared for this proposed action.

Status of stocks for CR Program crab fisheries is assessed annually and it is possible that some CR Program crab fisheries will not open in a given year. For example, during the first five years of the CR Program, the western Aleutian Islands red king crab and Pribilof Islands red and blue king crab fisheries have failed to open, and the Saint Matthew Island blue king crab fishery has only been open during the 2009–2010 and 2010–2011 fishing seasons. Regardless of whether a fishery is scheduled to open, regulations at 50 CFR 680.20(e)(4)(ii) require that the market report and non-binding price formula must be prepared for each crab fishery no later than 50 days before the opening date for the first crab fishing season for that crab QS fishery. Because most crab fisheries have an October 15 season opening date, most of the market reports and non-binding price formulas must be produced by August 26 each year. However, in most cases, the State of Alaska does not announce whether a CR Program crab fishery will be open or closed until October 1.

The proposed action would allow the AOs to mutually agree to forgo the production of the market report and non-binding price formula if a fishery is unlikely to and does not open. This agreement would be required to be included in the contract the AOs establish with the market analyst and formula arbitrator. If the AOs mutually agree to include this provision in their contract with the market analyst and the formula arbitrator, the contract would also have to require the production of the market report and non-binding price formula in the event that a fishery previously not anticipated to open does actually open. The proposed regulations at §§ 680.20 (f) and (g) would leave the details about the timeline for producing these reports in the event of a fishery opening to the mutual agreement of the AOs, only requiring that the market report and non-binding price formula be produced prior to June 30. The mutual agreement to forgo the issuance of a market report would need to be incorporated into the contract with the market analyst.

Regulations at § 680.20(e)(5) require that the AOs provide NMFS with the names of the persons serving as the market analyst and provide copies of the contracts with the market analyst and formula arbitrator no later than June 1 of each year. Therefore, the contract with the market analyst and formula arbitrator, including any terms that would allow forgoing the production of a market report and non-binding price formula for a fishery, would need to be incorporated in the contract between the AOs and the market analyst no later than June 1. If the AOs could not reach mutual agreement on these terms by June 1, then the existing regulatory requirements to produce a market report and non-binding price formula no later than 50 days before a fishery opening would apply.

As discussed above, because most fisheries have an October 15 opening date, this would require most market reports to be produced no later than August 26. The Council recommended this approach so that AOs unable to reach mutual agreement on whether to forgo production of market reports and non-binding price formula would have sufficient time to comply with the 50-day requirements at § 680.20 for their production.

The Council determined, and NMFS agrees, that production of a market report for fisheries unlikely to open is unnecessary and presents a financial burden to fishery participants. Elimination of the requirement to produce a market report for fisheries unlikely to open presents a minor risk that participants in a fishery will have inadequate information to inform price negotiations in the event that a fishery unexpectedly opens; however, NMFS agrees with the Council that this risk is mitigated by the requirement that AOs develop a contingency plan for describing how a market report will be produced when a fishery unexpectedly opens or when AOs disagree concerning whether a fishery will open.

Action 2: Modify the Timing for Release of the Aleutian Islands Golden King Crab Fishery Non-Binding Price Formula

Under current State regulations, the EAG and WAG fisheries open on August 15 of each year. This opening date means that the non-binding price formula developed for both fisheries must be released no later than June 26, as current regulations require that the formula be released at least 50 days prior to the opening date for these fisheries. However, the opening date for the EAG and WAG fisheries prevents the formula arbitrator from using the most current information from the Commercial Operators Annual Report (COAR), which is a key source of information on wholesale prices used in the non-binding price formula. COAR documents are typically not available until early July; therefore, data from the preceding season is not incorporated in the non-binding price formula. Testimony to the Council from the formula arbitrator, the unaffiliated Class A IFQ and IPQ AOs, and participants in these fisheries indicate that delaying the issuance of the non-binding price formula until the most recent COAR is available would provide more informative and useful reports for price negotiations.

This proposed action would amend the existing regulations at § 680.20(g) to require the non-binding price formula be released at least 30 days prior to the start of these fisheries to provide the formula arbitrator time to incorporate data from the most recent COAR. Fishery participants testifying to the Council indicated that producing the non-binding price formula at least 30 days prior to the start of the fisheries, rather than at least 50 days prior to the start of the fisheries, would not be expected to adversely affect price negotiations. Participants in the fisheries noted that a more complete and current non-binding price formula using COAR data from the most recent EAG and WAG fisheries would outweigh any potential disadvantage of a slightly shorter period of time to review the non-binding price formula before fishing begins. The Council determined and NMFS agrees that this proposed action would provide the affected fishing industry with the most recent data for use in the non-binding price formula while providing as much lead time as possible before the start of the fisheries for consideration of the non-binding price formula in any potential negotiations.

Action 3: Modify the Information Used and Timing for Release of the Market Report

Existing regulations at § 680.20(f) require that the market report be released no later than 50 days prior to the opening of a fishery and that it cannot be supplemented with additional information once released. Existing regulations permit the inclusion of publicly available information, as well as data from proprietary sources in the market report. The CR Program established the 50-day release date and prohibition on subsequent supplements to the market report to reduce the risk that the market report could contain proprietary data released during a fishing season. Any such data could unduly influence the results of the market report by creating incentives for processors or harvesters to present data that cannot be reviewed publicly and have that data incorporated in a manner that would influence the results of the market report for the benefit of one party, thereby increasing the risk of tainting the market report with information that could be used for anticompetitive purposes.

To address these concerns, regulations at § 680.20(f)(2)(v) require that any price information contained in the market report: (1) Include only data that is based on information regarding activities occurring more than three months prior to the generation of the market report; (2) include only statistics for which there are at least five providers reporting data upon which each statistic is based and for which no single provider's data represents more than 25 percent of a weighted basis of that statistic; and (3) be sufficiently aggregated such that any information disseminated in the market report would not identify specific price information by an individual provider of information. These provisions are intended to prevent the use of private information in the report that could skew the conclusions reached by the market analyst in a manner that might benefit a specific private interest and could therefore be anticompetitive.

While these requirements limit the potential for a harvester or processor to submit data for his or her benefit, these requirements also limit the usefulness of the market report because much of the data contained in the report are no longer indicative of market conditions by the time the market report is released. Furthermore, aggregation of data across five or more sources may not always be possible in the small market of crab producers, limiting the availability of data from private sources for any market report. Because of these concerns, representatives of the unaffiliated Class A IFQ and IPQ AOs recommended several changes to the market report.

The AOs recommended that, by at least 50 days prior to a fishery opening, the AOs representing the unaffiliated Class A IFQ and IPQ holders should be permitted to mutually agree to the timeline for release of the market report, and that these AOs could mutually agree to allow supplements to the market report at any time prior to June 30. Additionally, the AOs recommended that the market report use only publicly available information and that the AOs be provided discretion in recommending contents of the market report. The Council agreed that the current requirement for market reports to be complete at least 50 days prior to the season prevents inclusion of the most current and relevant pricing information and that the prohibition on supplements to the report prevents subsequent report modification to provide useful market information inseason or after completion of the initial report. The Council concurred with the AOs that market reports would be more timely and informative if those reports can be produced and supplemented at any time and recommended that the market report contain only publicly available information to reduce the risk that any information provided by a private source could taint the market report for anticompetitive purposes. For the purposes of this proposed action, publicly available information means data and information published in a manner that makes them available, either for a fee or at no cost, to the public at large. The Council also recommended allowing the AOs to negotiate the timing of release of the market report and the inclusion of any supplements to enhance the timeliness, accuracy, and usefulness of the market report.

NMFS agrees with the Council that the flexibility afforded by this proposed action should allow AOs to provide the most useful, timely information to participants in need of market information for price negotiations. This proposed action presents some risk that majority QS and PQS holders could assert their position in the AOs to provide a market report that is not particularly beneficial to holders of relatively small amounts of QS or PQS, and who may be likely to derive the greatest benefit from the market reports. The Council and NMFS find the risk to be minor and that the benefits of the proposed action outweigh this slight and unlikely risk.

To be consistent with the Council's recommendations, this proposed action would amend regulations at § 680.20(f) to remove the ability for IFQ and IPQ holders to submit proprietary data for inclusion in the market report, require that the information that the market analyst considers be publicly available, and allow AOs to mutually agree to negotiate the content and the timing for release of the market report. As with Action 1, while the proposed regulations would allow the AOs to mutually agree to a date for release of the market report, regulations would require release of the market report prior to June 30. NMFS also proposes to amend regulations at § 680.20(f) to clarify that if the AOs cannot mutually agree to the contents, timing for release, or a provision addressing whether any supplements for the market report will be permitted, the market report would have to be released 50 days prior to the start of a crab fishery, and supplements to the market report would not be permitted. This would ensure that a market report will be prepared for each fishery if the AOs cannot reach mutual agreement. The Council recommended that existing requirements should apply if mutual agreement is not possible to ensure that all parties have some market report available for consideration during price negotiations even if the data in that report may not be as current as that available later in the year.

Action 4: Clarify the Authority of the AOs, Market Analyst, Formula Arbitrator, Contract Arbitrators, and Third-Party Data Provider

The arbitration program established by the CR Program requires AOs to enter into a series of contracts with harvesters, processors, market analysts, arbitrators, and, if desirable, a third-party data provider. Regulations require each of these contracts to contain several specific provisions. However, the regulations do not specify all aspects of the arbitration system. For example, regulations at §§ 680.20(f) and (g) do not provide specific details about how the market reports and non-binding price formula documents should be released, how specific data-quality issues within these documents should be considered and addressed, or how new information should be incorporated. Because the regulations are specific on certain requirements and silent as to other aspects, arbitration administrators (*i.e.,* the AO representatives, contract arbitrators, formula arbitrators, market analysts, and third party data providers) have questioned their authority to agree

to provisions or develop procedures that could improve the arbitration program but that are not explicitly contained in regulation. Absent a regulation that clearly specifies this authority, it could be argued that these actions are beyond the scope of an arbitration administrator's powers.

As a result, arbitration administrators have expressed some concern that potential liability could influence decisionmaking. For example, if an arbitrator is concerned that a participant may litigate if the arbitrator makes a certain finding, the arbitrator's independence could be compromised. Likewise, arbitration organizations might choose not to make changes in the arbitration structure that are agreed to by participants in both harvesting and processing sectors, but are not addressed by the regulations, if they fear potential lawsuits related to those changes. At the extreme, the threat of liability could make it difficult to find persons willing to perform arbitration services.

Although not specifically stated in the regulations originally developed to implement the CR Program, a review of the EIS prepared for the CR Program supports the conclusion that the Council intended for arbitration administrators to have the discretion to adapt the arbitration system to address perceived problems in program administration. Specifically, the EIS notes that administration of the arbitration system ''would be undertaken primarily by industry, avoiding government involvement in the price setting process and providing greater flexibility to adopt agreed to modifications without government action.''

This flexibility was viewed by the Council and NMFS as necessary to avoid time consuming and costly processes of the Council and NMFS to amend the program through the standard regulatory process. The Council believed that broader administrative authority by the arbitration administrators would improve the efficiency of administration of the arbitration system. Although many industry participants have argued that the arbitration administrators have broad authority to adopt provisions to improve the operations of the arbitration system, absent a regulation clearly specifying this authority, it could be argued that these actions are beyond the scope of their powers.

For these reasons, the Council recommended that the regulations be modified to specifically state that arbitration administrators have the authority to establish procedures and make administrative decisions concerning the arbitration program that are in addition to those requirements specified in regulation, provided those actions are not in conflict with any of the regulatory requirements. NMFS agrees with the Council's recommendations and proposes this additional clarification in a new paragraph at § 680.20(i). This proposed clarification of authority is intended to remove any inhibitions of arbitration administrators to adopt procedures and make decisions that would improve the operation of the arbitration system.

Expected Effects of the Proposed Action

The RIR describes the predicted effects of the proposed action on harvesters, processors, arbitration administrators, communities, management and enforcement, consumers, and the nation. Only the effects of the proposed action on harvesters, processors, and arbitration administrators are described here. Overall, this action would be expected to slightly reduce the costs for harvesters and processors to comply with the arbitration system requirements by eliminating the requirements that market reports and non-binding price formulas be prepared for fisheries that are not open for fishing, provide a more timely and useful non-binding price formula for the eastern and western Aleutian Islands golden king crab fisheries, provide more timely and useful market reports that may be used during price negotiations between harvesters and processors, and provide additional flexibility and clarity for the arbitration administrators when establishing policies and procedures not detailed in the regulations.

A minor overall net benefit to the Nation is likely to arise from this proposed action. Action 1 is likely to decrease costs, Actions 2 and 3 are likely to improve the quality and timing of information provided to participants in the arbitration system, and Action 4 is likely to provide additional clarity for arbitration administrators. Overall, this proposed action would most benefit unaffiliated Class A IFQ and IPQ holders participating in the arbitration system.

Summary of Regulatory Changes

This action proposes the following changes to the existing regulatory text at 50 CFR part 680:

- Modify § 680.20(f)(1) to permit AOs by mutual agreement to include a provision in the contract with the market analyst to forgo the production of a market report if a crab fishery is not anticipated to open for fishing. If such a provision is included in the contract with the market analyst, the contract must also contain provisions to require the market analyst to produce a market report before June 30 in the event that the fishery that was not anticipated to open does subsequently open for fishing. In the absence of such an agreement and contract provisions, a market report would be required to be produced for that crab fishery no later than 50 days before the start of a crab fishery;
- Modify § 680.20(f)(2) to require that a market report contain only publicly available data, and that the AOs could, by mutual agreement, include a provision in their contract with the market analyst that would permit the production of supplemental reports for a fishery. The contract with the market analyst would have to specify the terms under which supplements to the market report would be produced if such a provision is included in the contract;
- Modify § 680.20(f)(4) to permit AOs, by mutual agreement, to include a provision in the contract with the market analyst that would allow the production of the market report for a crab fishery on a schedule that differs from the regulatory requirement to produce a market report not later than 50 days before the start of a crab fishery. If such a provision is included, the contract with the market analyst would have to specify the terms under which a market report would be produced and would have to require the release of the market report prior to the close of the fishery. In the absence of such an agreement by the AOs, the contract with the market analyst would require the production of a market report no later than 50 days before the start of a crab fishery;
- Modify § 680.20(f)(4)(ii) to specify that the Market Analyst is providing the Market Report. This modification was not a part of the Council's action on Amendment 30, but this proposed regulatory amendment is an appropriate opportunity to correct the lack of specificity in this paragraph;
- Modify § 680.20(g)(1) to permit AOs, by mutual agreement, to include a provision in the contract with the formula arbitrator to forgo the production of a non-binding price formula if a crab fishery is not anticipated to open for fishing. If such a provision is included, the contract must also contain provisions that would require the formula arbitrator to produce a non-binding price formula before June 30 in the event that a fishery that was not anticipated to open does subsequently open for fishing. In the absence of such an agreement and

contract provisions, a non-binding price formula would be required to be produced for that crab fishery no later than 50 days before the start of a crab fishery;

- Modify § 680.20(g)(2) to require that the non-binding price formula produced for the western Aleutian Islands golden king crab fishery and the eastern Aleutian Islands golden king crab fishery be produced no later than 30 days prior to the start of those crab fisheries; and
- Add paragraph (i) to § 680.20 to clarify that arbitration administrators may establish procedures, policies, and make administrative decisions concerning the administration of the arbitration system that are in addition to regulatory requirements, provided those procedures, policies, or administrative decisions are not otherwise in conflict with any requirement contained in the arbitration system regulations.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with Amendment 30, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared that describes the economic impact this proposed rule, if adopted, would have on small entities. Copies of the RIR/IRFA prepared for this proposed rule are available from NMFS. The RIR/IRFA prepared for this proposed rule incorporates by reference an extensive RIR/FRFA prepared for Amendments 18 and 19 to the FMP that detailed the impacts of the CR Program on small entities.

The IRFA for this proposed action describes the action, why this action is being proposed, the objectives and legal basis for the proposed rule, the type and number of small entities to which the proposed rule would apply, and the projected reporting, recordkeeping, and other compliance requirements of the proposed rule. It also identifies any overlapping, duplicative, or conflicting Federal rules and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. The description of the proposed action, its purpose, and its legal basis are described in the preamble and are not repeated here.

Under each of these actions, holders of CVO QS and holders of PQS would be regulated in the contracts that they must establish as a condition of receiving Class A IFQ and IPQ, respectively. The holders of these shares are the entities that are directly regulated by this action. Of the estimated 221 QS holders in the fisheries, 210 are estimated to be small entities. Of the estimated 25 PQS holders, 17 are estimated to be small entities.

All of the directly regulated persons would be expected to benefit from this action relative to the status quo alternative because the proposed action is expected to reduce the costs of compliance with the arbitration system, provide more timely and useful market reports and non-binding price formulas for use in negotiations, and provide clarity concerning the administration of the arbitration system.

Among the two alternatives considered for each of the four proposed actions, the Council and NMFS determined that the proposed actions would best minimize potential adverse economic impacts on the directly regulated entities. Action 1 Alternative 1, the status quo alternative, would continue to require that a market report and non-binding price formula be prepared for a crab fishery that is closed to fishing. Alternative 2, the proposed action, would provide the AOs with the discretion not to produce a market report and non-binding price formula if a fishery does not open, thereby reducing costs to the quota holders directly regulated.

No additional alternatives were analyzed because both a market report and non-binding price formula are prepared or they are not, and an additional alternative would not be necessary or appropriate to address the proposed action. Alternatives that would rely on preliminary notice from State of Alaska fishery managers of intent to close a fishery, after which arbitration organizations would not be required to contract for a market report or non-binding formula for that fishery were considered and not analyzed. The need for formal notice from fishery managers could be misinterpreted and disruptive to planning for fishing in the upcoming fishing season. Additionally, alternatives that would create a strict timeframe for applying the exemption, as well as for producing the market report and non-binding formula were considered and not analyzed. These alternatives are believed to be overly restrictive and administratively burdensome, limiting the ability of arbitration organizations to appropriately respond to changes in circumstances in providing the reports and formulas.

Action 2 Alternative 1, the status quo alternative, would continue to require that a non-binding price formula for the eastern and western Aleutian Islands golden king crab fisheries be prepared at least 50 days prior to the fishery openings. Alternative 2, the proposed action, would require that a non-binding price formula be prepared at least 30 days prior to the fishery opening, thereby ensuring that relevant price information can be incorporated in the non-binding price formula.

No additional alternatives were considered because the AOs and formula arbitrator stated that a minimum of 30 days between the release of the non-binding price formula and the start of the season is required to provide harvesters and processors with the time necessary to review the non-binding price formula, and an additional alternative would not be necessary or appropriate to address the proposed action.

Action 3 Alternative 1, the status quo alternative, would continue to require that market reports be released at least 50 days prior to the opening of a fishery, that they not be supplemented with additional information once released, and that they be based on publicly available information, as well as data from proprietary sources within certain parameters described in the preamble. Alternative 2, the proposed action, would provide the AOs with the discretion to mutually agree to negotiate the timing for release of a market report and to include any supplements to help provide a timely, accurate, and more useful product. Alternative 2 also would require that the information that the market analyst considers be publicly available.

No additional alternatives were analyzed because Alternative 2 provides the AOs with the discretion to determine the timing of the report and the need to produce supplements if required. An alternative that would fix a specific date for the production of a market report and any supplements, or that required the use of proprietary data, would fail to address the purpose of this proposed action, which is to provide a timely and complete report as needed by the participants in the arbitration system. These alternatives were believed to be overly prescriptive, limiting the ability of arbitration organizations to agree to terms for the production of market reports that would be most useful and informative to

fishery participants. In addition, an alternative to remove the requirement for any market report was also considered, but not analyzed. The market report is thought to provide beneficial baseline market information for negotiations. In addition, small, independent participants in the program are thought to derive benefit from information in the market report which might otherwise be costly for them to gather. As a consequence, the alternative to remove the market report requirement was determined to be inconsistent with the basic program objectives for price arbitration in the CR Program fisheries.

Action 4 Alternative 1, the status quo alternative, would not provide any additional clarity to arbitration administrators on their ability to establish policies and procedures not specifically described in existing regulations at § 680.20. Alternative 2, the proposed action, would clarify that AOs can establish procedures and make administrative decisions concerning the arbitration program that are not explicitly specified in the regulations provided those actions are not in conflict with any requirement contained in the arbitration system regulations.

An alternative that would grant immunity to arbitration administrators for their actions taken in the administration of the arbitration system was considered, but not analyzed. Regulations that grant arbitral immunity would effectively restrict the ability of courts to adjudicate certain actions against specific persons. While there are clear benefits to arbitration systems from arbitral immunity, and courts have applied arbitral immunity for arbitrators and arbitration organizations, it is uncertain whether the Magnuson-Stevens Fishery Conservation and Management Act authorizes NMFS to promulgate regulations that grant such immunity. The Council stated its belief that the preferred alternative (by clarifying the scope of authority of arbitration administrators) would strengthen any argument that common law or other immunity should be extended to any acts taken to administer the arbitration program (including the development of arbitration procedures).

The proposed actions in this rule would modify existing recordkeeping and reporting requirements, but do not propose any additional recordkeeping and reporting requirements. Specifically, the proposed actions would modify the timing, preparation, and release of information used in the market reports and non-binding price formulas. The analysis revealed no Federal rules that would conflict with, overlap, or be duplicated by the alternatives under consideration.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648–0516. Public reporting burden for the market report is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region (the address is available in the **ADDRESSES** section), and e-mail to *OIRA Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries.

Dated: August 3, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 680 is proposed to be amended as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

2. In § 680.20,

a. Revise paragraphs (e)(4)(i), (e)(4)(ii), and (f)(1);

b. Revise paragraphs (f)(2) introductory text, and paragraphs (f)(2)(i) and (f)(2)(ii), and remove paragraphs (f)(2)(iii) through (v);

c. Redesignate paragraphs (f)(2)(vi) through (f)(2)(viii) as paragraphs (f)(2)(iii) through (f)(2)(v) respectively, and revise newly redesignated paragraph (f)(2)(v);

d. Revise paragraphs (f)(4)(i), (f)(4)(ii), and (g)(1);

e. Revise paragraph (g)(2)(viii)(B); and

f. Add new paragraph (i) to read as follows:

§ 680.20 Arbitration system.

* * * * *

(e) * * *

(4) * * *

(i) For each crab fishing year, QS holders who are members of Arbitration QS/IFQ Arbitration Organization(s) and PQS holders who are members of PQS/IPQ Arbitration Organization(s), by mutual agreement, will select one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery. The number of Contract Arbitrators selected for each fishery will be subject to the mutual agreement of those Arbitration Organizations. The selection of the Market Analyst and the Formula Arbitrator must occur in time to ensure the Market Report and non-binding price formula are produced within the time line established in paragraphs (f)(4)(i) and (g)(2)(viii)(B) of this section.

(ii) The Arbitration Organizations representing Arbitration QS holders and PQS holders in a crab fishery shall establish by mutual agreement the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for each fishery. The contractual obligations of the Market Analyst, the formula Arbitrator and Contract Arbitrators will be enforced by the parties to the contract.

* * * * *

(f) * * *

(1) Except as provided in paragraph (f)(1)(ii) of this section:

(i) The Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Market Analyst to produce a Market Report for each crab QS fishery. The terms of this contract must specify that the Market Analyst must produce a Market Report that shall provide an analysis of the market for products of that fishery.

(ii) The Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations may, by mutual agreement, include a provision in the contract with the Market Analyst to forgo production of a Market Report

for a crab QS fishery if the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations anticipate that the crab QS fishery will not open for fishing during a crab fishing year. If such a provision is included in the contract with the Market Analyst, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations must include a provision in the contract with the Market Analyst to produce a Market Report not later than June 30 for the crab QS fishery that was expected to remain closed but subsequently opens for fishing during the crab fishing year.

(2) The contract with the Market Analyst must specify that:

(i) The Market Analyst will base the Market Report on a survey of the market for crab products produced by the fishery.

(ii) The Market Analyst will note generally the sources from which he or she gathered information. The Market Report must include only publicly available data and information. Data and information will be considered publicly available if they are published in a manner that makes them available, either for a fee or at no cost, to the public at large.

* * * * *

(v) The Market Analyst must not issue interim or supplemental reports for any crab QS fishery unless the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations, by mutual agreement, include a provision in the contract with the Market Analyst for the production of interim or supplemental reports for a crab QS fishery. If the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations have a mutual agreement to produce interim or supplemental reports, the contract with the Market Analyst must specify the terms and conditions under which those interim or supplemental reports will be produced.

* * * * *

(4) * * *

(i) In all subsequent years and except as provided in paragraph (f)(1)(ii) of this section, the Market Report for each crab QS fishery must be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery, unless the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations, by mutual agreement, include a provision in the contract with the Market Analyst to establish a different date for production of the Market Report for that crab QS fishery.

(ii) The contract with the Market Analyst must specify that the Market Analyst will provide the Market Report in that crab fishing year to:

* * * * *

(g) * * *

(1) Except as provided in paragraph (g)(1)(ii) of this section:

(i) The Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Formula Arbitrator to produce a Non-Binding Price Formula for each crab QS fishery.

(ii) The Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations may, by mutual agreement, include a provision in the contract with the Formula Arbitrator to forgo production of a Non-Binding Price Formula for a crab QS fishery if the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations anticipate that the crab QS fishery will not open for fishing during a crab fishing year. If such a provision is included in the contract with the Formula Arbitrator, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations must include a provision in the contract with the Formula Arbitrator to produce a Non-Binding Price Formula not later than June 30 for the crab QS fishery that was expected to remain closed but subsequently opens for fishing during the crab fishing year.

* * * * *

(2) * * *

(viii) * * *

(A) * * *

(B) In all subsequent years and except as provided in paragraph (g)(1)(ii) of this section, the Non-Binding Price Formula must be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery, except that the Non-Binding Price Formulas for the western Aleutian Islands golden king crab fishery and the eastern Aleutian Islands golden king crab fishery must be produced not later than 30 days prior to the first crab fishing season for those crab QS fisheries.

* * * * *

(i) Other Procedures, Policies, and Decisions.

The arbitration organizations, market analysts, arbitrators, or third party data providers are authorized to adopt arbitration system procedures, including additional provisions in the various contracts, provided those procedures are not inconsistent with any other provision in the regulations.

* * * * *

[FR Doc. 2011–20187 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 154

Wednesday, August 10, 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

Forest Service

Missouri River Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Missouri River Resource Advisory Committee will meet in Helena, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. The meeting is open to the public. The purpose of the meeting is to approve previous meeting notes; review, vote and recommend projects for Title II funding; and address any questions or comments from the public.

DATES: The meeting will be held Tuesday, September 13, 2011 at 6 p.m.

ADDRESSES: The meeting will be held in the Elkhorn/Tizer meeting room at the Helena National Forest Supervisor's Office at 2880 Skyway Drive, Helena, MT 59602. VTC will be available; members of the public can attend the meeting via VTC at their local Forest Service office.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Helena National Forest office. Please call ahead to 406–495–3747 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kathy Bushnell, Forest Public Affairs Officer/DFO, Helena National Forest, 406–495–3747, *kbushnell@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed in **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Approve previous meeting notes; review, vote and recommend projects for Title II funding; and address any questions or comments from the public. 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. A summary of the meeting will be posted at *http://www.fs.fed.us/r1/helena/* within 21 days of the meeting.

Dated: August 4, 2011.

Kathy Bushnell,

Forest Public Affairs Officer/DFO.

[FR Doc. 2011–20348 Filed 8–9–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Juneau Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Juneau Resource Advisory Committee will meet in Juneau, AK. 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.

DATES: The meeting will be held August 26, 2011, 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at Juneau Ranger District, 8510 Mendenhall Loop Road, Juneau, AK 99801.

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 Juneau Ranger District. Please call ahead to (907) 586–8800 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Hannah Atadero, RAC Coordinator, (907) 586–8879, *hatadero@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 **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted:

(1) Review of project proposals for recommendation to Forest Supervisor. 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 August 15, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 8510 Mendenhall Loop Road, Juneau, AK 99801, or by e-mail to *hatadero@fs.fed.us,* or via facsimile to (907) 586–7090. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Juneau?OpenDocument* within 21 days of the meeting.

Dated: August 2, 2011.

Marti M. Marshall,

Designated Federal Official.

[FR Doc. 2011–20350 Filed 8–9–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Juneau Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Juneau Resource Advisory Committee will meet in Juneau, AK. 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.

DATES: The meeting will be held August 22, 2011, 8 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at Juneau Ranger District, 8510 Mendenhall Loop Road, Juneau, AK 99801.

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 Juneau Ranger District. Please call ahead to (907) 586–8800 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Hannah Atadero, RAC Coordinator, (907) 586–8879, *hatadero@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review of project proposals for recommendation to Forest Supervisor. 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 August 12, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 8510 Mendenhall Loop Road, Juneau, AK 99801, or by e-mail to *hatadero@fs.fed.us,* or via facsimile to (907) 586–7090. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Juneau?OpenDocument* within 21 days of the meeting.

Dated: August 2, 2011.

Marti M. Marshall,

Designated Federal Official.

[FR Doc. 2011–20353 Filed 8–9–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee will meet by video-teleconference in Wrangell, Alaska and Petersburg, Alaska. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) (the Act) and in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review project proposals and make project funding recommendations.

DATES: The meeting will be held on Friday, September 9, 2011 from 9 a.m. to noon, or until business is concluded. An alternate meeting date has been scheduled for Friday, September 23 in case of lack of committee quorum, or other unforeseen circumstances.

ADDRESSES: Committee members will meet at the Wrangell Ranger District office at 525 Bennett Street in Wrangell, Alaska, and at the Petersburg Ranger District office at 12 North Nordic Drive in Petersburg, Alaska. Interested persons may attend in person at either location, or by telephone. A teleconference number for those who wish to call in will be provided on request. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District office at 12 North Nordic Drive or the Wrangell Ranger District office at 525 Bennett Street during regular office hours (Monday through Friday 8 a.m.–4:30 p.m).

FOR FURTHER INFORMATION CONTACT: Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, phone (907) 772–3871, e-mail *csavage@fs.fed.us,* or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *rdalrymple@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed for **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Evaluation of project proposals and recommendation of projects for funding. This is expected to be the committee's final meeting for project funding recommendations under the current authority. More information on this meeting, including a full agenda, is available online at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Wrangell-Petersburg?OpenDocument.* 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. A one-hour public input session will be provided beginning at 9 a.m. Individuals wishing to make an oral statement should request in writing by September 2, 2011 to be scheduled on the agenda.

Written comments and requests for time for oral comments should be sent to Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929. Comments may also be sent via e-mail to *csavage@fs.fed.us,* or via facsimile to 907–772–5995. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Wrangell-Petersburg?OpenDocument* within 21 days of the meeting.

Dated: August 1, 2011.

Christopher S. Savage,

District Ranger.

[FR Doc. 2011–20253 Filed 8–9–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Central Montana Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Central Montana Resource Advisory Committee will meet in Stanford, Montana. The committee is meeting as authorized under the Secure Rural Schools and Community Self Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held August 31, 2011 and will begin at 7 p.m.

ADDRESSES: The meeting will be held at the Judith Ranger District, located at 109 Central Avenue, Stanford, MT. Written comments should be sent to Ron Wiseman, Lewis and Clark National Forest, 109 Central Avenue, Stanford, Montana 59479. Comments may also be sent via e-mail to *rwiseman@fs.fed.us.*

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 Lewis and Clark National Forest, 109 Central Avenue, Stanford, Montana 59479. Visitors are encouraged to call ahead to (406) 566–2292 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ron Wiseman, Designated Federal Official, USDA, Lewis and Clark National Forest, 109 Central Avenue, Stanford, MT 59479; (406) 566–2292; E-mail *rwiseman@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review of project proposals (2) Final recommendation of project propsals; (3) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: August 4, 2011.

Ron B. Wiseman,

Designated Federal Officer.

[FR Doc. 2011–20358 Filed 8–9–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2011–0019]

Notice To Request an Extension and Revision of Currently Approved Information Collection and Request for Comments.

AGENCY: Natural Resources Conservation Service.

ACTION: Notice to Request an Extension of a Currently Approved Information Collection and request for comments.

SUMMARY: The Natural Resources Conservation Service (NRCS) published in the **Federal Register** of October 22, 2008, a ''Notice to Reinstate a Previously Approved Information Collection'' for volunteer workers (73 FR 62949). In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the intention of NRCS to request an extension for currently approved information collection, Volunteer Program-Earth Team. This information collection is set to expire on July 31, 2012. NRCS is seeking that it be extended to July 31, 2015, for the Volunteer Interest and Placement Summary form and the Time Sheet form. The collected information will help NRCS to match the skills of individuals who are applying for volunteer work that will further the agency's mission. Information will be collected from potential volunteers who are 14 years of age or older.

DATES: *Effective Date:* This is effective August 10, 2011.

Comment Date: Submit comments on or before October 11, 2011.

ADDRESSES: Comments should be submitted, identified by Docket Number NRCS–2011–0019, using any of the following methods:

- *Government-wide rulemaking Web site: http://regulations,gov.* Follow the instructions for sending comments electronically.
- *Mail: Attention:* Michele Eginoire, National Earth Team Office, Natural Resources Conservation Service, 5140 Park Avenue, Suite C, Des Moines, Iowa 50321.
- *Fax: Attention:* Michele Eginoire, (515) 290–0325.
- *E-mail: Michele.eginoire@ia.usda.gov.*

All comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Michele Eginoire, National Volunteer Coordinator, at (515) 289–0325, extension 102; *Fax:* (515) 289–4561; or *e-mail: michele.eginoire@ia.usda.gov.*

SUPPLEMENTARY INFORMATION: Collection of this information is necessary to match volunteer assignments to agency mission as required by Federal Personnel Manual, Supplement 296–33, subchapter 3. Agencies are authorized to recruit, train and accept with regard to Civil Service classification laws, rules, or regulations, the services of individuals to serve without compensation. Volunteers may assist in any agency program/project and may perform any activities which agency employees are allowed to do. Volunteers must be at least 14 years of age. Persons interested in volunteering must write, call, e-mail, visit an NRCS office, or NRCS Web site at *http://www.nrcs.usda.gov/feature/volunteers/.* The forms are available electronically and can be completed electronically.

Description of Information Collection

Title: Volunteer Program—Earth Team; OMB Number: 0578–0024;

Expiration Date of Approval: July 31, 2012 .

Form NRCS–PER–002, Volunteer Interest and Placement Summary, is an optional form and assists the volunteer's supervisor in placing the volunteer in a position which is beneficial to the volunteer and the agency. The form is placed in a volunteer ''case file'' and will be destroyed 3 years after the volunteer has completed service. In the event that the volunteer is injured, the ''case file'' will be transferred to an official Personnel Folder.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 minutes per response.

Respondents: Retirees, students, teachers, persons with disabilities, or senior citizens.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 25 hours.

Form NRCS–PER–004, Time Sheet, is also an optional form and provides the volunteer or volunteer's supervisor a simplified method for tracking the

volunteer's time. The form is placed in a volunteer ''case file'' and will be destroyed 3 years after the volunteer has completed service. In the event that the volunteer is injured, the ''case file'' will be transferred to an official Personnel Folder.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 minute per response.

Respondents: Retirees, students, teachers, persons with disabilities, or senior citizens.

Estimated Number of Respondents: 20,480.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 683 hours.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received will be available for public inspection during regular business hours at the National Earth Team Office, Natural Resources Conservation Service, 5140 Park Avenue, Suite C, Des Moines, Iowa 50321.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments also will become a matter of public record.

Signed this 2nd day of August 2011, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. 2011–20215 Filed 8–9–11; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a community forum of the Wisconsin Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 2 p.m. on September 16, 2011, at the Ramada Inn, 205 S. Barstow St., Eau Claire, WI 54701. The purpose of the meeting is to conduct a community forum on civil rights issues confronting Somali immigrants in Western Wisconsin. Participants of the forum will include community representatives, government officials, school administrators, business leaders, and other interested parties.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by September 23, 2011. The address is U.S. Commission on Civil Rights, Midwestern Regional Office, 55 W. Monroe St., Suite 410, Chicago, IL 60603. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Carolyn Allen, Administrative Assistant, (312) 353–8311, or by *e-mail: callen@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Midwestern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Commission's Midwestern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Midwestern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 5, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–20249 Filed 8–9–11; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a community forum of the Minnesota Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 3 p.m. on September 15, 2011, at the University of St. Thomas School of Law 2115 Summit Avenue, St. Paul, MN 55105. The purpose of the meeting is to conduct a community forum on unemployment disparity in the Twin Cities. Participants of the forum will include community representatives, government officials, business leaders, and other interested parties.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by September 22, 2011. The address is U.S. Commission on Civil Rights, Midwestern Regional Office, 55 W. Monroe St., Suite 410, Chicago, IL 60603. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Carolyn Allen, Administrative Assistant, (312) 353–8311, or by *e-mail: callen@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Midwestern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Commission's Midwestern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Midwestern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 5, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–20248 Filed 8–9–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2012 Economic Census Covering Information; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services (Except Public Administration) Sectors.

OMB Control Number: 0607–0934.

Form Number(s): Too numerous to list here.

Type of Request: Reinstatement, with change, of an expired collection.

Burden Hours: 1,389,465 in fiscal year 2013.

Number of Respondents: 1,530,400.

Average Hours per Response: 0.9 hours.

Needs and Uses: The 2012 Economic Census covering the information; professional, scientific, and technical services; management of companies and enterprises; administrative and support and waste management and remediation services; educational services; health care and social assistance; arts, entertainment, and recreation; and other services (except public administration) sectors will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 2.8 million establishments with payroll classified in the North American Industry Classification System (NAICS).

The information sector comprises establishments engaged in the following processes: (a) Producing and distributing information and cultural products, (b) providing the means to transmit or distribute these products as well as data or communications, and (c) processing data.

The professional, scientific, and technical services sector comprises establishments engaged in processes where human capital is the major input. These establishments make available the knowledge and skills of their employees, often on an assignment basis, where an individual or team is responsible for the delivery of service to a client.

The management of companies and enterprises sector comprises two main types of establishments: (a) Those that hold the securities of (or other equity interest in) companies and enterprises; and (b) those (except government establishments) that administer, oversee, and manage other establishments of the company or enterprise.

The administrative and support and waste management and remediation services sector comprises establishments performing routine support activities for the day-to-day operations of other organizations. These essential activities are of the type often undertaken in-house by establishments in many sectors of the economy.

The educational services sector comprises establishments providing academic or technical instruction or educational support services such as student exchange programs and curriculum development.

The health care and social assistance sector comprises establishments that provide health care and social assistance to individuals.

The arts, entertainment, and recreation sector comprises establishments that operate facilities or provide services to meet varied cultural, entertainment, and recreational interests of their patrons. This sector includes (a) Establishments that are involved in producing, promoting, or participating in live performances, events, or exhibits intended for public viewing; (b) establishments that preserve and exhibit objects and sites of historical, cultural, or educational interest; and (c) establishments that operate facilities or provide services that enable patrons to participate in recreational activities or pursue amusement, hobby, or leisure time interests.

The other services, except public administration sector comprises establishments in one of the following subsectors: Repair and maintenance; personal and laundry services; and religious, grantmaking, civic, and professional and other similar organizations. The public administration sector is out of scope to the economic census. The U.S. Census Bureau conducts the quinquennial census of governments and other current programs that measure the activities of government establishments.

The information collected will produce basic statistics by kind of business for number of establishments, receipts/revenue, payroll, and employment. It will also yield a variety of subject statistics, including receipts or revenue by product line, receipts by class of customer, and other industry-specific measures, such as exported services or personnel by occupation. Basic statistics will be summarized for the United States, states, metropolitan areas, counties and places. Tabulations of subject statistics also will present data for the United States and, in some cases, for states.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of the gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry, business, academe, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

If the economic census was not conducted, the Federal government would lose vital source data and benchmarks for the national accounts, input-output tables, and other composite measures of economic activity, causing a substantial degradation in the quality of these important statistics. Further, the government would lose critical benchmarks for current sample-based economic surveys and an essential source of detailed, comprehensive economic information for use in policy-making, planning, and program administration.

Affected Public: Business or other for-profit, Not-for-profit institutions; State, local or Tribal Governments.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: This information collection is part of the 2012 Economic Census, which is required by law under Title 13, United States Code (U.S.C.). Section 131 of this statute directs the taking of a census at 5-year intervals. Section 224 makes reporting mandatory.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: August 5, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–20277 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Summer Institute for Middle School Science Teachers (NIST Summer Institute) and the NIST Research Experience for Teachers (NIST RET) Applicant Requirements.

OMB Control Number: 0693–0059.

Form Number(s): NIST–1103.

Type of Request: Regular submission (revision/extension of a currently approved information collection).

Burden Hours: 100.

Number of Respondents: 100.

Average Hours per Response: 1.

Needs and Uses: The NIST Summer Institute and the NIST RET are two competitive financial assistance (cooperative agreement) programs that offer middle school (Grades 6–8) science teachers an opportunity to participate in hands-on activities, lectures, tours, visits, or in scientific research with scientists and engineers in NIST laboratories. The aim is to encourage them to inspire students to pursue careers in science, technology, engineering, and mathematics (STEM) fields.

This request is for the information collection for form (NIST–1103) that must be completed by nominated teachers. The request for Additional Applicant Information Requirement is no longer needed for this collection and has been removed. Information is used in making cooperative agreement decisions.

Affected Public: U.S. public school districts, U.S. accredited private educational institutions, and U.S. middle school (Grades 6–8) science teachers.

Frequency: Annually.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: August 5, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–20289 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Permit Family of Forms.

OMB Control Number: 0648–0205.

Form Number(s):.

Type of Request: Regular submission (revision/extension of a current information collection).

Number of Respondents: 9,606.

Average Hours Per Response: Application for vessels fishing in the Exclusive Economic Zone, dolphin/wahoo operator permit application, dealer permit application, 20 minutes; Aquaculture Live Rock Site Evaluation Report, 45 minutes; Rockfish Commercial Vessel Monitoring System Maintenance, 2 hours; zone transit notification, permit transfer and notarization, annual landings report for Gulf of Mexico shrimp, Aquacultured Live Rock Harvest Application, Aquacultured Live Rock Deposit, Notice of Intent to Harvest Aquacultured Live Rock, notification of lost or stolen trap, 5 minutes; notification of authorization of trap retrieval, 15 minutes.

Burden Hours: 3,596.

Needs and Uses: This request is for a revision of a currently approved information collection. National Marine Fisheries Service (NMFS) Southeast Region manages the United States (U.S.) fisheries of the exclusive economic zone (EEZ) off the South Atlantic, Caribbean, and Gulf of Mexico under the Fishery Management Plans (FMP) for each Region. The Regional Fishery Management Councils prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The regulations implementing the FMPs that have reporting requirements are at 50 CFR part 622.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. NMFS Southeast Region requests information from fishery participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the fisheries of the EEZ off the South Atlantic, Caribbean, and Gulf of Mexico.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 5, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–20288 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Billfish Tagging Report.

OMB Control Number: 0648–0009.

Form Number(s): NOAA 88–162.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 1,000.

Average Hours Per Response: 5 minutes.

Burden Hours: 83.

Needs and Uses: This request is for extension of a currently approved information collection.

The National Oceanic and Atmospheric Administration's Southwest Fisheries Science Center operates a billfish tagging program. Tagging supplies are provided to volunteer anglers. When anglers catch and release a tagged fish they submit a brief report on the fish and the location of the tagging. The information obtained is used in conjunction with tag returns to determine billfish migration patterns, mortality rates, and similar information useful in the management of the billfish fisheries. This program is authorized under 16 U.S.C. 760(e), Study of migratory game fish; waters; research; purpose.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: OIRA Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 5, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–20286 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico. This administrative review covers mandatory respondents Mueller Comercial de Mexico, S. de R.L. de C.V. (Mueller), Southland Pipe Nipples Company, Inc. (Southland), Lamina y Placa Comercial, S.A. de C.V. (Lamina), and Tuberia Nacional, S.A. de C.V. (TUNA).[1] The period of review (POR) is November 1, 2009, through October 31, 2010.

The respondents provided certifications of no shipments. We sought further clarification of a specific entry indicated by U.S. Customs and Border Protection (CBP) data and analyzed parties' explanations of this entry. The Department's review of import data supports the claims of the respondents. We preliminarily determine that the respondents did not have reviewable sales, shipments, or entries during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* August 10, 2011.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–6312 or (202) 482–0469, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1992, the Department published the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico. *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992) (*Antidumping Duty Order*). On November 1, 2010, the Department published a notice of opportunity to request an administrative review in the **Federal Register. See** *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 67079 (November 1, 2010). On November 30, 2010, the Department received multiple requests for administrative review. Mueller requested a review of itself and Southland. Southland requested a review of itself and Mueller. U.S. Steel Corporation (U.S. Steel) requested reviews of Mueller, Southland, TUNA, and Lamina. Wheatland Tube Company (Wheatland) requested reviews of Mueller and Southland. Allied Tube and Conduit and TMK IPSCO Tubulars (Allied/TMK) requested reviews of Mueller, Southland, TUNA, and Lamina. On December 28, 2010, the Department published a **Federal Register** notice initiating an antidumping administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565 (December 28, 2010) (Initiation Notice). The Department stated in its initiation of this review that it intended to rely on CBP data to select respondents if respondent selection was considered appropriate. *See Initiation Notice.* For the purpose of potential respondent selection, we made a data inquiry to CBP and placed certain documents from this data query on the record. *See* memorandum from Mark Flessner to the File entitled, ''Certain Circular Welded Non-Alloy Carbon Steel Pipe from Mexico: Customs and Border Protection Documents,'' dated March 17, 2011 (CBP Documents Memorandum). For further discussion of these documents, *see* the ''No Shipments Claims'' section below.

On January 25, 2011, Wheatland requested that the Department conduct a duty absorption inquiry with regard to Mueller, Lamina, and Ternium Nacional, S.A. de C.V. (Ternium).

[1] The Department determined that Lamina is the successor-in-interest to TUNA. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe From Mexico,* 75 FR 82374 (December 30, 2010).

Mueller responded to this request on February 22, 2011.

On January 26, 2011, the Department issued its standard antidumping questionnaire to Mueller and Southland (both represented by the same counsel) and to Lamina (at the time, the successor-in-interest to TUNA).

On February 16, 2011, Lamina claimed that it and TUNA (on whose behalf it was responding) had made no shipments or entries for consumption of subject merchandise to the United States during the POR. On February 25, 2011, Mueller claimed that it had made no shipments or entries for consumption of subject merchandise to the United States during the POR, providing documentation in support of its claim. On March 11, 2011, Mueller provided additional documentation in support of its claim.

On April 7, 2011, Wheatland requested that the Department conduct verifications of both Mueller and Lamina. On April 8, 2011, Lamina responded to Wheatland's verification request.

On April 13, 2011, Wheatland submitted comments concerning the CBP data contained in the March 17, 2011, memorandum cited above. On April 19, 2011, U.S. Steel placed the verification report from the previous segment of this proceeding on the record of the instant segment.

On May 19, 2011, we sent a ''No Shipments Inquiry'' to CBP to confirm that there were no shipments or entries of certain circular welded non-alloy steel pipe from Mexico by Mueller during the POR. On July 19, 2011, we sent additional such inquiries to CBP to confirm that there were no shipments or entries of certain circular welded non-alloy steel pipe from Mexico by TUNA, Lamina, and Southland during the POR. On July 19, 2011, Southland submitted a clarification of its February 25, 2011, submission; it stated specifically that Southland (as an entity distinct from Mueller) neither produced nor exported any subject merchandise during the POR. We received no information from CBP to contradict the statements of Mueller, Southland, and Lamina (including TUNA) and the results of our data query that there were no shipments or entries of subject merchandise to the United States during the POR.

Scope of the Order

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this order.

The merchandise covered by the order and subject to this review are currently classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Preliminary Determination of No Shipments

A. No Shipments Claims

As noted above, the respondents submitted letters to the Department indicating that they made no shipments or entries of subject merchandise to the United States during the POR that are subject to this administrative review. In response to the Department's query, CBP data showed that a single entry of subject merchandise may have entered for consumption into the United States during the POR. *See* CBP Documents Memorandum at Attachment 1. In its February 25, 2011, claim of no shipments, Mueller and Southland addressed the status of this single entry, providing additional documentation on March 11, 2011. The documentation submitted by Mueller and Southland demonstrated that the single entry in question had been mischaracterized as subject merchandise. This documentation demonstrated that Mueller and Southland had applied for—and received CBP approval for—a post-entry amendment to the entry in question. This is confirmed by the Department's ''No Shipments Inquiry'' to CBP with regard to Mueller. CBP provided no information identifying additional Mueller shipments. The customs documents related to the single suspect entry were the same that had been submitted by Mueller and Southland to explain that the entry had been mischaracterized by Southland's customs broker. *See* CBP Documents Memorandum at Attachment 2. The above explanation is equally applicable to TUNA, which is confirmed by the Department's ''No Shipments Inquiry'' to CBP with regard to TUNA. *See* CBP Documents Memorandum (containing proprietary information not susceptible to public summary).

In addition, as stated above, the Department sent a ''No Shipments Inquiry'' to CBP with regard to Lamina and Southland to confirm that there were no shipments or entries of certain circular welded non-alloy steel pipe from Mexico by either respondent during the POR. We received no information from CBP to contradict the results of our data query and the claims made by each respondent.

Therefore, because the evidence on the record indicates that Mueller, Southland, TUNA, and Lamina made no shipments of subject merchandise to the United States during the POR, we preliminarily determine that there are no reviewable transactions during the POR for each of the respondents for whom reviews were requested.

Since the implementation of the 1997 regulations, our practice concerning no shipment respondents had been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997); *see also Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review,* 70 FR 53161, 53162 (September 5, 2007), unchanged in *Oil Country Tubular Goods from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 95 (January 3, 2006). In such circumstances, we normally instructed CBP to liquidate any entries from the no shipment company at the

deposit rate in effect on the date of entry.

In our May 6, 2003, ''automatic assessment'' clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

Because ''as entered'' liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the respondents, and exported by other parties at the all-others rate, should we continue to find that the respondents had no shipments of subject merchandise in the POR in our final results. *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989, 56990 (September 17, 2010). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in its entirety but, rather, to complete the review with respect to the respondents, issuing appropriate instructions to CBP based on the final results of the review. *See* the ''Assessment Rates'' section of this notice below.

B. Duty Absorption

On January 25, 2011, Wheatland requested that the Department conduct a duty absorption inquiry with regard to Mueller, Lamina, and Ternium Nacional, S.A. de C.V. (Ternium). Mueller responded to this request on February 22, 2011. Section 751(a)(4) of the Tariff Act of 1930, as amended (the Act), provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order whether antidumping duties have been absorbed by the foreign producer or exporter if the subject merchandise is sold in the United States through an affiliated importer. *See also* 19 CFR 351.213(j). First, Ternium is not a respondent in this administrative review. Notwithstanding, because this review was not initiated at the two-year or four-year interval from publication of the antidumping duty order, a duty absorption inquiry is not authorized. *See Antidumping Duty Order.*

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue appraisement instructions directly to CBP 15 days after the date of publication of the final results of this review.

As noted above, the Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment Policy Notice.* This clarification will apply to POR entries by each respondent company if we continue to make a final determination of no shipments based upon their certifications that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. We will instruct CBP to liquidate these entries at the all-others rate established in the less-than-fair-value investigation (32.62 percent) if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

The preliminary results of administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 2, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–20331 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Initiation of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective Date: August 10, 2011.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza at (202) 482–3019 or David Cordell at 202–482–0408, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On July 14, 2011, the Department of Commerce (''the Department'') received a petition concerning imports of large liquid dielectric power transformers (''large power transformers'') from the Republic of Korea (''Korea''), filed in proper form on behalf of ABB Inc., Delta Star, Inc. and Pennsylvania Transformer Technology, Inc., (collectively, ''the Petitioners''). *See* the Petition for the Imposition of Antidumping Duties on Large Power Transformers from the Republic of Korea, filed on July 14, 2011 (''the Petition''). On July 20, 2011, the Department issued a request for additional information and clarification of certain areas of the Petition. The Petitioners filed a response to this request on July 26, 2011 (hereinafter, ''Supplement to the Petition''). In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), the Petitioners allege that imports of large power transformers from Korea are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. On July 28, 2011, the Petitioners filed an amendment to the Petition in which they revised the scope language, amended the lost sales listing and provided the Harmonized Tariff Schedule of the United States (''HTSUS'') page for HTSUS number 8504.90.9540, (hereinafter, ''Second Supplement to the Petition''). On August 1, 2011, the Petitioners filed an additional amendment to the Petition with respect to industry support for the Petition (hereinafter, ''Third Supplement to the Petition'').

On July 28, 2011, the Department received a standing challenge to the Petition by Hyosung Corporation, a Korean producer and exporter of the subject merchandise, and its U.S. affiliate HICO America Inc. (collectively, ''Hyosung''). On July 29, 2011, the Department received a standing challenge to the petition by Hyundai Corporation, a Korean producer and exporter of the subject merchandise, and its U.S. affiliate Hyundai Corporation, USA (collectively, ''Hyundai''). The Petitioners responded to HICO's and Hyundai's submission on August 1, 2011 (hereinafter, ''Fourth Supplement to the Petition'').

The Department finds that the Petitioners filed the Petition on behalf of

the domestic industry because the Petitioners are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping duty investigation which the Petitioners are requesting that the Department initiate (*see* ''Determination of Industry Support for the Petition'' section below).

Period of Investigation

The period of investigation (''POI'') is July 1, 2010, through June 30, 2011. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are large power transformers from Korea. For a full description of the scope of the investigation, please see the ''Scope of Investigation,'' in Appendix I of this notice.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with the Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department invites all interested parties to submit such comments by August 23, 2011, 20 calendar days from the signature date of this notice. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

All comments must be filed on the record of the investigation. If filed after August 5, 2011, all comments and submissions to the Department must be filed electronically using Import Administration's Antidumping Countervailing Duty Centralized Electronic Service System (''IA ACCESS'').[1]

Comments on Product Characteristics for Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of large power transformers to be reported in response to the Department's antidumping questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe large power transformers, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the hierarchy under which the physical characteristics should be considered in product matching.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaire, we must receive comments by August 23, 2011. Additionally, rebuttal comments must be received by August 30, 2011.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. Although both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that large power transformers constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Large Power Transformers from the

[1] *See http://www.gpo.gov/fdsys/pkg/FR–2011–07–06/pdf/2011–16352.pdf* for details of the Department's Electronic Filing Requirements, which go into effect on August 5, 2011. Information on help using IAACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

Republic of Korea (''Checklist''), at Attachment II, Analysis of Industry Support for the Petition Covering Large Power Transformers from Korea, on file in the Central Records Unit, Room 7046 of the main Department of Commerce building.

In determining whether the Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above. To establish industry support, the Petitioners provided their production of the domestic like product in 2010 and compared this to the estimated total production of the domestic like product for the entire domestic industry. *See* Volume I of the Petition at Exhibit 2 and Supplement to the Petition, at Exhibit 9. To estimate total 2010 production of the domestic like product, the Petitioners used their own data and industry specific knowledge. *See* Volume I of the Petition, at Exhibit 2 and Supplement to the Petition, at Exhibit 9; *see also* Checklist at Attachment II. We have relied upon data the Petitioners provided for purposes of measuring industry support. For further discussion, *see* Checklist at Attachment II.

As noted above, on July 28, 2011, and July 29, 2011, we received submissions on behalf of Hyosung and Hyundai, respectively, Korean producers and exporters of the subject merchandise, questioning the domestic like product definition and the industry support calculation in the Petition. On August 1, 2011, the Petitioners filed a reply. For further discussion of these submissions, *see* Checklist at Attachment II.

Based on information provided in the Petition, supplemental submissions, and other information obtained by the Department, we determine that the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See* Checklist at Attachment II for further details on the Department's evaluation of industry support for the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping duty investigation that they are requesting the Department initiate, in accordance with section 732(c)(4)(A) of the Act.

Allegations and Evidence of Material Injury and Causation

The Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). In addition, the Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The Petitioners contend that the industry's injured condition is illustrated by reduced market share, reduced shipments, reduced capacity utilization, underselling and price depression or suppression, a decline in financial performance, lost sales and revenue, an increase in import penetration, and threat of future injury. *See* Volume I of the Petition, at 21–22, 24–33, and Exhibits 5, 7–9, and 10–11, and Second Supplement to the Petition at 3 and at Attachment 1. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petition Covering Large Power Transformers from the Republic of Korea.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of large power transformers from Korea. The sources of data for the deductions and adjustments relating to the U.S. price, and cost of production (''COP'') are also discussed in the initiation checklist. *See* Checklist at 6–9.

Export Price

The Petitioners based U.S. export price (''EP'') on the prices of four large power transformers manufactured in Korea and offered for sale in the United States by two Korean producers/exporters. *See* Checklist at 7; *see also* Volume II of the Petition at II–2 and Exhibit AD–2 and Supplement to the Petition at 29, 30 and Exhibits 18 and 21. Based on the stated sales and delivery terms, the Petitioners then adjusted the U.S. prices to account for certain expenses associated with exporting and delivering the product to the U.S. customers (*i.e.,* U.S. inland rail freight, ocean freight and U.S. port fees). While the Department will normally make additional downward adjustments to U.S. price for U.S. brokerage and handling, foreign brokerage and handling, direct selling and credit expenses, the Petitioners took a conservative approach and did not include any such adjustments in their calculation of U.S. price. *See* Checklist at 7; *see also* Volume II of the Petition at page II–3, 5, 7, and 10 and Exhibits AD–2–3, and Supplement to the Petition, at 29–31 and Exhibits 18–21.

Normal Value

According to the Petitioners, large power transformers are highly complex and specialized products that are manufactured to a customer's unique specifications. As such, identifying sales of identical or similar large power transformers in the U.S. and Korean markets that could be compared on a price-to-price basis is virtually impossible because they differ substantially. Accordingly, the Petitioners based normal value on constructed value (''CV'') in accordance with section 773(a)(4) of the Act.

Constructed value consists of the cost of manufacturing, selling, general and administrative (''SG&A'') expenses, financial expenses and profit. *See* section 773(a)(4) of the Act. The Petitioners calculated constructed value based on the U.S. producer's bid proposal cost of production model for the U.S. sales of large power transformers used in the Petition. The U.S. producer develops the cost of production for each transformer when bidding on large power transformers contracts in the United States, and thus the costs were developed based on the specific transformer for each U.S. sale identified in the Petition.

In calculating constructed value, the Petitioners adjusted the U.S. producer's cost of manufacturing for known differences, where available, between the U.S. and Korean markets. Specifically, the Petitioners based the cost of labor on the Korean manufacturing wage from the International Labor Statistics as published on the Department's Web site.

See Supplement to the Petition at Exhibit 13. The Petitioners also adjusted the U.S. producer's energy costs based on publicly available Korean electricity and natural gas costs. *See* Supplement to the Petition at Exhibits 14 and 15. The Petitioners did not adjust the U.S. producer's cost of materials for the differences between the U.S. and Korean markets. According to the Petitioners such an adjustment is not practical because the materials used in the production of large power transformers are specialized inputs, the costs of which are not reflected accurately in published data. The Petitioners also state that the U.S. material costs are comparable to the costs in the Korean market because most of the inputs are commodity-type products that are widely traded on world markets. To calculate the variable and fixed overhead costs, the Petitioners relied upon the variable and fixed overhead rates of the U.S. producer calculated as a percentage of the labor costs adjusted for known differences between the U.S. and Korean markets. *See* Supplement to the Petition at Exhibit 16.

To determine constructed value, the Petitioners added to the cost of manufacturing amounts for SG&A expenses, financial expenses and profit based on financial statements of the Korean producers that manufactured the specific transformers sold to the United States pursuant to each U.S. sale identified in the Petition. *See* Supplement to the Petition at Exhibits 16 and 17; *see also* Checklist, at 8 and 9.

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of large power transformers from Korea are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of EPs and CV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for large power transformers range from 43.01 percent to 60.81 percent. *See* Checklist at 9.

Initiation of Antidumping Investigation

Based upon the examination of the Petition on large power transformers from Korea, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of large power transformers are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5). *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008). The Department stated that ''{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.'' *Id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of known exporters or producers for this investigation is large, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports under the HTSUS numbers 8504.23.0040 and 8504.23.0080 for the large power transformers.[2] We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within seven days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo*.

Distribution of Copy of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the Government of Korea. The Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version of the Petition to the Government of Korea, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than August 29, 2011, whether there is a reasonable indication that imports of large power transformers from Korea are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*'') amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of

[2] The scope also covers HTSUS number 8504.90.9540 of all transformer parts. However, we will not use this number in our respondent selection analysis as it is a basket category and would not allow for a meaningful analysis.

the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 3, 2011.

Ronald K. Lorentzen

Deputy Assistant Secretary for Import Administration.

Appendix I

Scope of Investigation

The scope of this investigation covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete.

Incomplete LPTs are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of LPTs. The ''active part'' of the transformer consists of one or more of the following when attached to or otherwise assembled with one another: the steel core or shell, the windings, electrical insulation between the windings, the mechanical frame for an LPT.

The product definition encompasses all such LPTs regardless of name designation, including but not limited to step-up transformers, step-down transformers, autotransformers, interconnection transformers, voltage regulator transformers, rectifier transformers, and power rectifier transformers.

The LPTs subject to this investigation are currently classifiable under subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2011–20336 Filed 8–9–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–972, A–583–848]

Certain Stilbenic Optical Brightening Agents From the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 10, 2011.

FOR FURTHER INFORMATION CONTACT: Sandra Stewart at (202) 482–0768 or Hermes Pinilla at (202) 482–3477 (Taiwan), AD/CVD Operations, Office 5; Maisha Cryor at (202) 482–5831 or Shaun Higgins at (202) 482–0679 (People's Republic of China), AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determinations

On April 20, 2011, the Department of Commerce (the Department) initiated the antidumping duty investigations on certain stilbenic optical brightening agents from the People's Republic of China and Taiwan. See Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations, 76 FR 23554 (April 27, 2011). The notice of initiation stated that the Department would issue its preliminary determinations for these investigations no later than 140 days after the issuance of the initiation in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1) unless postponed.

On July 29, 2011, Clariant Corporation (the petitioner) made a timely request pursuant to 19 CFR 351.205(b)(2) and (e) for postponement of the preliminary determinations in these investigations. The petitioner requested a 50-day postponement of the preliminary determinations in order to allow the Department additional time to resolve a number of complex issues in these investigations.

The petitioner submitted a request for postponement of the preliminary determinations more than 25 days before the scheduled date of the preliminary determinations. Therefore, because the petitioner provided reasons for its request and the Department finds no compelling reasons to deny the request, the Department is postponing the deadline for the preliminary determinations in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) by 50 days to October 27, 2011. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 4, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–20306 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 10, 2011.

SUMMARY: On February 18, 2011, the Department of Commerce (the ''Department'') initiated a new shipper review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC'') covering sale(s) of subject merchandise made by Dongguan Yujia Furniture Co., Ltd. (''Yujia'').[1]

The Department preliminarily determines that Yujia has not made sales at less than normal value (''NV''). Upon completion of the final results of review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period January 1, 2010 through December 31, 2010 (the period of review or ''POR''), for which the importer-specific assessment rates are above *de minimis.*

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor or Jeff Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0989 or (202) 482–2769, respectively.

SUPPLEMENTARY INFORMATION: The antidumping duty order on wooden bedroom furniture from the PRC was published on January 4, 2005.[2] On January 28, 2011, the Department received a timely request for a new shipper review from Yujia. On February 18, 2011, the Department initiated this new shipper review. *See Initiation Notice.* On February 24, 2011, the Department issued an antidumping duty questionnaire. From March 2011 through July 2011, the Department

[1] *See Wooden Bedroom Furniture From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 76 FR 10557 (February 25, 2011) (''*Initiation Notice*'').

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005).

received timely questionnaire and supplemental questionnaire responses.

On April 7, 2011, the Office of Policy issued a memorandum identifying six countries as being at a level of economic development comparable to the PRC for the instant POR. The countries identified in that memorandum are India, the Philippines, Indonesia, Thailand, Ukraine, and Peru.[3] On April 12, 2011, the Department released the Policy Memorandum to interested parties and provided parties with an opportunity to submit comments regarding the selection of a surrogate country in the instant review.[4] On May 17, 2011, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, ''Petitioners'') provided comments on surrogate country selection and publicly available information to value factors of production (''FOP'').[5] On May 27, 2011, Yujia provided publicly available data to value its FOP.[6]

Period of Review

The POR is January 1, 2010, through December 31, 2010.

Scope of the Order

The product covered by the order is wooden bedroom furniture (''WBF''). WBF is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[7] highboys,[8] lowboys,[9] chests of drawers,[10] chests,[11] door chests,[12] chiffoniers,[13] hutches,[14] and armoires;[15] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[16] (9) jewelry armoies;[17] (10) cheval mirrors;[18] (11) certain metal parts;[19] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with

[3] *See* Memorandum entitled, ''Request for a List of Surrogate Countries for New Shipper Review of the Antidumping Duty Order on Wooden Bedroom Furniture (''Furniture'') from the People's Republic of China (''China''),'' dated April 7, 2011 (''Policy Memorandum'').

[4] *See* Letter from Howard Smith, Program Manager, Office 4, to All Interested Parties, requesting comments from interested parties regarding the selection of a surrogate country, dated April 12, 2011.

[5] *See* Letter from Petitioners regarding, ''Wooden Bedroom Furniture From the People's Republic of China: Submission of Publicly Available Surrogate Values to Value Factors of Production,'' dated May 17, 2011 (''Petitioners' Surrogate Value Submission'').

[6] *See* Submission from Yujia regarding, ''Wooden Bedroom Furniture from People's Republic of China: Surrogate Values and Comments for Preliminary Results'' dated May 27, 2011 (''Yujia's Surrogate Value Submission'').

[7] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[8] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[9] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[10] A chest of drawers is typically a case containing drawers for storing clothing.

[11] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[12] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[13] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[14] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[15] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[16] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[17] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning ''Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 31, 2004. *See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part,* 71 FR 38621 (July 7, 2006).

[18] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.,* a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[19] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

a dresser as part of a dresser-mirror set; (13) upholstered beds [20] and (14) toy boxes.[21]

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as ''wooden * * * beds'' and under subheading 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as ''parts of wood.'' Subject merchandise may also be entered under subheading 9403.50.9041 or 9403.60.8081. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as ''glass mirrors * * * framed.'' This order covers all WBF meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Bona Fides Sale Analysis

For this review, consistent with the Department's practice, the Department investigated the *bona fide* nature of the sales(s) made by Yujia during the POR. In evaluating whether or not a sale in a new shipper review is commercially reasonable, and therefore *bona fide,* the Department considers, *inter alia,* such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. *See, e.g., Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fides* analysis, ''all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.'' *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002)).

The Department preliminarily finds that the sale(s) of subject merchandise made by Yujia were made on a *bona fide* basis. Specifically, the Department preliminarily finds that: (1) The timing of the sale(s) by itself does not indicate that the sale(s) might not be *bona fide;* (2) record evidence indicates that overall the price and quantity of the sale(s) are commercially reasonable and not atypical of normal business practices of wooden bedroom furniture exporters; (3) Yujia and its customer did not incur any extraordinary expenses arising from the transaction(s); and (4) the new shipper sale(s) were made between unaffiliated parties at arm's length. The Department does not believe Yujia's unaffiliated importer's failure to substantiate its claim that it resold the goods in question at a profit [22] overcomes the totality of evidence described above demonstrating Yujia's sale(s) are *bona fide.* Therefore, the Department has preliminarily found that Yujia's sale(s) of subject merchandise to the United States were *bona fide* for purposes of this new shipper review.

Non-Market Economy Country Status

In every antidumping case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (''NME'') country.[23] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585, 22586–7 (May 2, 1994) (*Silicon Carbide*). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104, 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

Separate Rate Recipient

Yujia is a wholly Chinese-owned company and is located in the PRC. Therefore, the Department has analyzed whether Yujia has demonstrated the absence of both *de jure* and *de facto* government control over its export activities.

[20] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 2007).

[21] To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (''ASTM'') standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum ''Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,'' dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

[22] *See* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, regarding, ''Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: *Bona Fide* Sales Analysis for Dongguan Yujia Furniture Co., Ltd.,'' dated concurrently with this notice.

[23] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 7500 (February 14, 2003) (unchanged in the final results, *Tapered Rolling Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 70488 (December 18, 2003)).

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

The evidence provided by Yujia supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with Yujia's business and export licenses;[24] (2) applicable legislative enactments decentralizing control over PRC companies;[25] and (3) formal measures by the government decentralizing control of PRC companies.[26]

B. Absence of De Facto Control

The Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence provided by Yujia supports a preliminary finding of *de facto* absence of government control over its export activities based on the following: (1) Yujia set its own export prices independent of the government and without the approval of a government authority; (2) Yujia's general managers have the authority to negotiate and bind the company in an agreement; (3) Yujia maintains autonomy from the government in making decisions regarding the selection of management; and (4) Yujia retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[27]

The evidence placed on the record by Yujia demonstrates an absence of *de jure* and *de facto* government control, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, the Department has preliminarily granted a separate rate to Yujia.

Surrogate Country

When the Department conducts an antidumping duty new shipper review of imports from an NME country, section 773(c)(1) of the Act directs the Department to base NV, in most circumstances, on the NME producer's FOP valued in a surrogate market-economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOP using ''to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) At a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise.'' Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value all FOP in a single country.

As stated previously, the Department identified India, the Philippines, Indonesia, Thailand, Ukraine, and Peru as being at a level of economic development comparable to the PRC.[28] Petitioners provided a report entitled *The Furniture Industry in the Philippines* published by the international research firm CSIL Milano in October 2007 stating that in 2006 Philippine manufacturers produced furniture valued at $813 million and the Philippines exported furniture valued at $279 million.[29] *The Furniture Industry in the Philippines* states that wood has replaced rattan as the most commonly used material in furniture production and wooden furniture accounted for 51 percent of all Philippine furniture exports. Additionally, *The Furniture Industry in the Philippines* states that the furniture sector was comprised of approximately 15,000 manufacturers and 800,000 workers.[30] No other parties commented on the selection of a surrogate country. Based on the above, we have determined that the Philippines is a significant producer of merchandise that is comparable to the merchandise under review.

With respect to data considerations in selecting a surrogate country, both Petitioners and Yujia have submitted publicly-available Philippine data for valuing FOP.[31] No other data from other potential surrogate countries exist on this record. In addition, the Department used the Philippines as the primary surrogate country in the second, third, fourth, and fifth administrative reviews of this proceeding.[32] Therefore, based on its experience, the Department finds that the Philippines has provided reliable, publicly-available data for valuing the FOP. Also the Philippines is the only country listed by the Office of Policy as a potential surrogate country for the PRC for which sufficient data exist to calculate an accurate antidumping duty margin.

Thus, the Department has preliminarily selected the Philippines as the primary surrogate country because the record shows that the Philippines is at a level of economic development

[24] *See* Yujia's business license from ''Wooden Bedroom Furniture from the People's Republic of China—Section A Questionnaire Response'' dated March 17, 2011 (''Yujia's Section A response'') at Exhibit A–2.

[25] *See* Yujia's Section A response at Exhibit A–1.

[26] *See id.*

[27] *See* Yujia's Section A response from p. 3 to 11 and Exhibits A–1, A–2, and A–3.

[28] *See* Policy Memorandum. The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC.

[29] *See* Petitioners' Surrogate Value Submission at Attachment 19, tab C, p. 6.

[30] *See* Petitioners' Surrogate Value Submission at Attachment 19, tab C, from pp. 8–10.

[31] *See* Petitioners' Surrogate Value Submission and Yujia's Surrogate Value Submission.

[32] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273, 8277–78 (February 13, 2008) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008)); *see Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review,* 74 FR 6372, 6376 (February 9, 2009) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 41374 (August 17, 2009)); *see also Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part,* 75 FR 5952 (February 5, 2010) (unchanged in *Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part,* 75 FR 50992 (August 18, 2010)); *see Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part,* 76 FR 7534 (February 10, 2011).

comparable to that of the PRC and is a significant producer of merchandise comparable to subject merchandise. Moreover, the record indicates that sufficient, contemporaneous, public Philippine data are readily-available.[33] Accordingly, we have calculated NV using Philippine prices to value Yujia's FOP.[34] In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value the FOP until 20 days after the date of publication of the preliminary results.[35]

Fair Value Comparisons

In accordance with section 777(A)(d) of the Act, to determine whether Yujia sold wooden bedroom furniture to the United States at less than NV, the Department compared the export price (''EP'') of U.S. sales to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, the Department used EP as the basis for U.S. price for Yujia's sale(s) where the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price was not otherwise warranted. In accordance with section 772(c) of the Act, the Department calculated EP for Yujia by deducting the following expenses, where applicable, from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign inland freight from the plant to the port of exportation, and foreign brokerage and handling. Additionally, the Department based movement expenses on surrogate values (''SV'') where the service was purchased from a PRC company. For details regarding our EP calculations, see the memoranda entitled, ''Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results Analysis Memorandum for Dongguan Yujia Furniture Co., Ltd.'' (''Yujia Analysis Memorandum'') and the Surrogate Value Memorandum, both dated concurrently with the preliminary results.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOP, because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOP include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on FOP reported by Yujia for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly-available surrogates to value FOP, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department will normally value the factor using the actual price paid for the input. However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use surrogate values to determine the NV.[36] Where the facts developed in either U.S. or third-country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non-industry specific export subsidies), the Department will have reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized.[37]

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized, but rather relies on information that is generally available at the time of its determination.[38]

Factor Valuation

In accordance with section 773(c) of the Act, we calculated NV based on FOP reported by Yujia for the POR. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly-available Philippine SV (except as noted below). In selecting the SV, the Department considered the quality, specificity, and contemporaneity of the data. As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to Philippine import SV a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory where appropriate (*i.e.,* where the sales terms for the market economy inputs indicate they were not delivered to the factory). This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit (''CAFC'') in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir.1997). Due to the extensive number of SV in this new shipper review, we present only a brief discussion of the main FOP in this notice. For a detailed description of all SV used to value Yujia's reported FOP, *see* Surrogate Value Memorandum.

Yujia reported that one of its raw material inputs was produced in a market economy country and paid for in market economy currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a market economy supplier in meaningful quantities (*i.e.,* not insignificant quantities) and pays for the inputs in a market economy currency, we use the actual price paid by the respondent for the inputs to value the inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[39] Yujia reported information

[33] *See* Petitioners' Surrogate Value Submission and Yujia's Surrogate Value Submission.

[34] *See* 2010 New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: Surrogate Value Memorandum for the Preliminary Results (''Surrogate Value Memorandum'').

[35] In accordance with 19 CFR 351.301(c)(1), for the final results of this new shipper review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[36] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 1953 (January 10, 2001) (''*TRBs 1998–1999*''), and accompanying Issues and Decision Memorandum at Comment 1.

[37] *See TRBs 1998–1999* at Comment 1; *see also China Nat'l. Machinery Imp. & Exp. Corp. v. United States,* 293 F. Supp. 2d 1334, 1338–39 (Ct. Int'l Trade 2003).

[38] *See* H.R. Rep. 100–576, at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24.

[39] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

demonstrating that the quantity of certain raw materials it purchased from market economy suppliers is significant. Thus, in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,* we have used the actual purchases of these inputs to value the inputs.[40]

Where market economy purchases of inputs were not made in significant quantities during the POR, we used, in total or in part, import values for the POR from the Philippines National Statistics Office (''Philippines NSO'') reported in U.S. dollars on a cost, insurance, and freight (''CIF'') basis to value the inputs. Specifically, we used Philippines NSO data to value the following inputs: wood (*e.g.,* medium-density fiberboard, wood veneer, *etc.*), adhesives and finishing materials (*e.g.,* glue, paint, pigment, thinner, *etc.*), hardware (*e.g.,* steel screws, bolts, nails, metal fittings, *etc.*), other materials (*e.g.,* sand paper, sand cloth, sand sponge, wrench, *etc.*), and packing materials (*e.g.,* carton box, poly bag, adhesive tape, polyfoam, extended polythene, *etc.*). The Philippines NSO provides data on a net weight basis, which is the same basis used by Yujia in reporting FOP.[41] For a detailed description of all SV used to value the reported FOP, *see* Surrogate Value Memorandum.

Previously, the Department used regression-based wages that captured the worldwide relationship between *per capita* Gross National Income (''GNI'') and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor. However, on May 14, 2010, the CAFC in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010) (''*Dorbest*''), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest,* the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology, and the data sources. *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment,* 76 FR 9544 (Feb. 18, 2011).

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings. *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*''). In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (''Yearbook'').

In these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies.* To value Yujia's labor input, the Department relied on data reported by the Philippines to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under International Standard Industrial Classification (''ISIC'') Revision 3.1 (''Manufacture of Furniture; Manufacturing n.e.c.'') to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by the Philippines to the ILO under Sub-Classification 36 of the ISIC–Revision 3.1 standard, in accordance with Section 773(c)(4) of the Act. For these preliminary results, the calculated industry-specific wage rate is 78 Philippine pesos. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memorandum.

As stated above, the Department used the Philippines ILO data reported under Chapter 6A of the Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, *etc.* Since certain financial statements used to calculate the surrogate financial ratios include itemized details of indirect labor costs such as benefits, bonuses, pensions, and other items for staff welfare, the Department made adjustments to the surrogate financial ratios by moving costs from manufacturing and overhead to labor. *See Labor Methodologies.*

We valued electricity using Philippine data from *The Cost of Doing Business in Camarines Sur,* which is available at the Philippine government's Web site for the province: *http://www.camarinessur.gov.ph.* These data pertain only to the cost of electricity for industrial consumption.[42]

We valued inland freight and brokerage and handling using Philippine data from the World Bank's *2011 Doing Business in the Philippines* report. The 2011 World Bank report includes data contemporaneous with the POR.[43]

We valued factory overhead, selling, and general, and administrative (''SG&A'') expenses, and profit, using the audited financial statements for the fiscal year ending December 31, 2009, from the following companies: APY Cane International; Arkane International, Corp.; Berbenwood Industries Inc.; Betis Crafts, Inc.; Clear Export Industries, Inc.; Heritage Muebles Mirabile Export Inc.; Insular Rattan & Native Products Corporation; Interior Crafts Of The Islands, Inc.; Las Palmas Furniture, Inc.; Maple and Pine International, Inc.; Stonesets International Inc.; and Wicker & Vine, Inc., which are Philippine producers of merchandise identical to subject merchandise that received no countervailable subsidies and that earned a before-tax profit in 2009. From this information, we were able to determine factory overhead costs as a percentage of the total raw materials, labor and energy (''ML&E'') costs; SG&A expenses as a percentage of ML&E plus overhead costs (*i.e.,* cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A expenses. For further discussion, *see* Surrogate Value Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists for the period January 1, 2010, through December 31, 2010:

[40] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs*''); *see also* Yujia Analysis Memorandum.

[41] Yujia submitted Harmonized Tariff Schedule (''HTS'') number 44219099 for the Department's consideration in the valuation of wood sticks used in the production of wooden furniture. However, this HTS classification is valued on a per-piece basis. Because Yujia reported its consumption of wood sticks by weight, we based the surrogate value for wood sticks on all 8 digit categories within the 4421 heading that were on a per-kilogram basis.

[42] *See* Surrogate Value Memorandum.

[43] *See Ibid.*

Exporter/Producer	Weighted-average margin (percent)
Dongguan Yujia Furniture Co., Ltd.	0.00

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttals to written comments must be limited to the issues raised in the written comments and may be filed no later than five days after the deadline for filing case briefs. *See* 19 CFR 351.309(d). Further, parties submitting written comments and rebuttal comments are requested to provide the Department with an additional copy of those comments on a compact disk. Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). If requested, a hearing normally will be held two days after the scheduled date for submission of rebuttal comments. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of any issues raised in written comments, within 90 days of the date on which these preliminary results are issued, in accordance with 19 CFR 351.214(i)(1), unless the time limit is extended. *See* 19 CFR 351.214(i)(2).

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculate importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR, pursuant to 19 CFR 351.212(b)(1).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 216.01 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: August 3, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–20327 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Continuation of Antidumping Duty Order on Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that termination of the suspended antidumping duty investigation on solid fertilizer grade ammonium nitrate (''ammonium nitrate'') from the Russian Federation (''Russia'') would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, the Department is publishing notice of the continuation of this antidumping duty order.

DATES: *Effective Date:* August 10, 2011.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni or Judith Wey Rudman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3063 or (202) 482–0192, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2011, the Department initiated and the ITC instituted a second sunset review of the ammonium nitrate suspended investigation. *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 11202 (March 1, 2011) and *Ammonium Nitrate from Russia,* Investigation No. 731–TA–856 (Second Review), 76 FR 11273 (March 1, 2011).

On March 3, 2011, the Department received a letter from the Ministry of Economic Development (''MED'') dated February 22, 2011, that had been sent to the United States Embassy in Moscow for transmittal to the Department concerning the suspension agreement. In that letter, the MED stated that it was withdrawing from the suspension agreement, effective 60 days after notice of termination. Effective May 2, 2011,

the Department terminated the suspension agreement and issued an antidumping duty order. *See Termination of the Suspension Agreement on Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation and Notice of Antidumping Duty Order,* 76 FR 23569 (April 27, 2011).

As a result of its review, the Department determined that termination of the antidumping duty order on ammonium nitrate from Russia would likely lead to a continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail, should the order be terminated. *See Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation; Final Results of the Expedited Sunset Review of Antidumping Duty Order,* 76 FR 39847 (July 7, 2011).

On August 4, 2011, pursuant to section 751(c) of the Act, the ITC published its determination that termination of the order on ammonium nitrate from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Ammonium Nitrate from Russian,* 76 FR 47238 (August 4, 2011). Therefore, pursuant to section 351.218(f)(4) of the Department's regulations, the Department is publishing this notice of the continuation of the order on ammonium nitrate from Russia.

Scope

The products covered by the order on ammonium nitrate from Russia include solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate). The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise within the scope of the order is dispositive.

Continuation

As a result of the respective determinations by the Department and the ITC that termination of the order on ammonium nitrate from Russia would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby gives notice of the continuation of the order on ammonium nitrate from Russia. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation will be the date of publication in the **Federal Register** of this Continuation Notice. Pursuant to sections 751(c)(2) of the Act, the Department intends to initiate the next five-year sunset review of the order on ammonium nitrate from Russia not later than July 2016.

This five-year (sunset) review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: August 5, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–20308 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825, A–475–824, A–201–822]

Stainless Steel Sheet and Strip in Coils From Germany, Italy, and Mexico: Revocation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 2, 2010, the Department of Commerce (the Department) initiated its second sunset reviews of the antidumping duty orders on stainless steel sheet and strip (SSSS) in coils from Germany, Italy, and Mexico. Pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the U.S. International Trade Commission (ITC) determined that revocation of the existing antidumping duty orders on SSSS in coils from Germany, Italy, and Mexico would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, pursuant to section 751(d)(2) of the Act, and 19 CFR 351.222(i)(1)(iii), the Department is revoking the antidumping duty orders on SSSS in coils from Germany, Italy, and Mexico.

DATES: *Effective Date:* July 25, 2010.

FOR FURTHER INFORMATION CONTACT: David Cordell or Angelica Mendoza, AD/CVD Operations Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0408 and (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1999, the Department published its final results of sales at less than fair value on SSSS in coils from Germany,[1] Italy,[2] and Mexico.[3] On June 2, 2010, the Department initiated its second five-year sunset reviews of the antidumping duty orders on SSSS in coils from Germany, Italy, and Mexico. *See Initiation of Five-Year (''Sunset'') Review,* 75 FR 30777 (June 2, 2010).

As a result of these sunset reviews, the Department determined that revocation of the antidumping duty orders on SSSS in coils from Germany, Italy, and Mexico would be likely to lead to the continuation or recurrence of dumping. *See Certain Stainless Steel Sheet and Strip in Coils From Germany, Japan, the Republic of Korea, and Taiwan: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders,* 75 FR 62104 (October 7, 2010); *Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of the Five-Year (''Sunset'') Review of the Antidumping Duty Order,* 76 FR 25668 (May 5, 2011) and *Stainless Steel Sheet and Strip in Coils From Italy: Final Results of the Full Five-Year (''Sunset'') Review of the Antidumping Duty Order,* 76 FR 25670 (May 5, 2011). The Department notified the ITC of the magnitude of the margins likely to prevail should the antidumping duty orders be revoked.

On August 2, 2011, the ITC published its determination that, pursuant to section 751(c) of the Act, revocation of the antidumping duty orders on SSSS in coils from Germany, Italy, and Mexico would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Stainless Steel Sheet and Strip From Germany, Italy, Japan, Korea,*

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[1] *See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany,* 64 FR 30710 (June 8, 1999).

[2] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy,* 64 FR 30750 (June 8, 1999).

[3] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico,* 64 FR 30790 (June 8, 1999).

Mexico, and Taiwan, 76 FR 46323 (August 2, 2011), and USITC Publication 4244 (July 2011), titled *Stainless Steel Sheet and Strip from Germany, Italy, Japan, Korea, Mexico, and Taiwan* (Investigation Nos. 701–TA–382 and 731–TA–798–803 (Second Review)).

Scope of the Orders

For purposes of the orders, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to the orders is currently classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, 7220.90.00.80.

Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the orders is dispositive.

Excluded from the scope of the orders are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm, and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d). Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors. Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length. Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the orders. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron. Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the orders. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [4]

Certain electrical resistance alloy steel is also excluded from the scope of the orders. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [5]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the orders. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve

[4] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[5] ''Gilphy 36'' is a trademark of Imphy, S.A.

aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17''.[6]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the orders. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[7] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[8] Also excluded from the orders is a permanent magnet iron-chromium-cobalt stainless steel strip containing, by weight, 13 percent chromium, 6 percent cobalt, 71 percent iron, 6 percent nickel and 4 percent molybdenum. The product is supplied in widths up to 1.27 cm (12.7 mm), inclusive, with a thickness between 45 and 75 microns, inclusive. This product exhibits magnetic remanence between 400 and 780 nWb, and coercivity of between 60 and 100 oersteds. This product is currently supplied under the trade name ''SemiVac 90.''

[6] ''Durphynox 17'' is a trademark of Imphy, S.A.

[7] This list of uses is illustrative and provided for descriptive purposes only.

[8] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Determination

As a result of the determination by the ITC that revocation of the antidumping duty orders is not likely to lead to the continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the antidumping duty orders on SSSS in coils from Germany, Italy, and Mexico. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is July 25, 2010 (*i.e.,* the fifth anniversary of the effective date of publication in the **Federal Register** of the previous continuation notice of these orders).[9] The Department will notify U.S. Customs and Border Protection to terminate suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after July 25, 2010. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of these orders.

These five-year sunset reviews and notice are in accordance with section 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: August 3, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–20315 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Continuation of Antidumping Duty Orders on Stainless Steel Sheet and Strip in Coils from Germany, Italy, Japan, the Republic of Korea, Mexico, and Taiwan, and Countervailing Duty Orders on Stainless Steel Sheet and Strip in Coils from Italy and the Republic of Korea,* 70 FR 44886 (August 4, 2005).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA622

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on August 30–31, 2011. The Council will convene on Tuesday, August 30th, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m. The Council will reconvene on Wednesday, August 31st, 2011, from 9 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at La Concha—a Renaissance Resort, located at 1077 Ashford Avenue, Condado, San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; *telephone:* (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 140th regular Council Meeting to discuss the items contained in the following agenda:

August 30, 2011—9 a.m. to 5 p.m.

- Call to Order;
- Adoption of Agenda;
- Consideration of the 138th and 139th Council Meeting Verbatim Transcriptions;
- Executive Director's Report;
- 2011 Comprehensive Annual Catch Limit (ACL) Amendment for the U.S. Caribbean Public Hearings Report and Final Action.
- USVI Traps Reduction Project Report;
- Public Comment Period—(5) Five-minute Presentations.

August 30, 2011—5:15 p.m.—6 p.m.

- Administrative Committee Meeting:

—AP/SSC Membership;
—Budget Update FY 2011;
—SOPPs Update;
—Other Business.

August 31, 2011—9 a.m.—5 p.m.

- SEDAR-St. Croix Meeting Report;
- Enforcement Reports:

—Puerto Rico—DNER;
—U.S. Virgin Islands—DPNR;
—NOAA/NMFS;
—U.S. Coast Guard.

- Administrative Committee Recommendations;
- Meetings Attended by Council Members and Staff;
- Public Comment Period (5-Minute Presentations);
- Other Business;
- Next Council Meeting.

The established times for addressing items on the agenda may be adjusted as

necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meetings are open to the public, and will be conducted in English. However, simultaneous interpretation (English-Spanish) will be provided. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: August 5, 2011.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–20332 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA624

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) groundfish plan teams will meet in Seattle.

DATES: The meetings will begin at 1 p.m. on Tuesday, August 30, and continue through Friday, September 2, 2011.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Observer Training Room (GOA Plan Team) and Traynor Room (BS/AI Plan Team), Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo or Diana Stram, NPFMC, (907) 271–2809.

SUPPLEMENTARY INFORMATION: *Agenda:* Principal business is to prepare and review the draft Economic Report, the draft Ecosystems Consideration Chapter, the draft stock assessments for some target-categories, and recommend preliminary groundfish catch specifications for 2012/13.

The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: August 5, 2011.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–20333 Filed 8–9–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 11–C0007]

CVS Pharmacy, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with CVS Pharmacy, Inc., containing a civil penalty of $45,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 25, 2011.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11–C0007, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Lead Trial Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 3, 2011.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, CVS Pharmacy, Inc. (''CVS'') and the U.S. Consumer Product Safety Commission (''Commission'') staff (''Staff'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. CVS is a corporation organized and existing under the laws of Rhode Island, with its principal offices located in Woonsocket, Rhode Island. At all relevant times, CVS sold apparel and other products.

Staff Allegations

4. From August 2008 to January 2009, CVS sold and/or held for sale Golden Grove and Young USA children's hooded fleece jackets with drawstrings at the neck (''Jackets'').

5. CVS sold the Jackets, and/or held the Jackets for sale, to consumers.

6. The Jackets are ''consumer product[s],'' and, at all relevant times, CVS was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, Staff recommends that no children's upper outerwear in sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

8. In June 1997, ASTM adopted a voluntary standard (ASTM F1816–97) incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards associated with drawstrings and should ensure that garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also references the CPSA's section 15(b) (15 U.S.C. 2064(b)) reporting requirements.

10. CVS informed the Commission that there had been no reported incidents or injuries associated with the Jackets.

11. CVS's distribution in commerce of the Jackets did not meet either the Guidelines or ASTM F1816–97, failed to comport with Staff's May 2006 defect letter, and posed a strangulation hazard to children.

12. On March 25, 2009, the Commission, in cooperation with the Jackets' importer, announced a recall of the Jackets.

13. CVS had presumed and actual knowledge that the Jackets distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). CVS obtained information that reasonably supported the conclusion that the Jackets contained a defect that could create a substantial product hazard or that the Jackets created an unreasonable risk of serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), CVS was required to immediately inform the Commission of the defect and risk.

14. CVS knowingly failed to immediately inform the Commission about the Jackets as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected CVS to civil penalties.

CVS's Responsive Allegations

15. CVS denies Staff's allegations that CVS knowingly violated the CPSA and asserts that at the time it sold the Jackets, CVS did not have adequate notice that civil penalties could arise from its conduct. In imputing knowledge to CVS, Staff principally relies upon ''Recommended Guidelines,'' which state that the ''CPSC's drawstring guidelines do not represent a standard or mandatory requirement set by the agency.'' Staff also relies upon ASTM F1816–97, but this voluntary standard merely incorporates the Guidelines by reference.

16. In order to supply products to CVS, vendors are required to represent and warrant to CVS that all merchandise delivered to CVS will comply with all existing laws, regulations, standards, orders and rulings including, but not limited to, the CPSA.

17. CVS sold not more than 582 Jackets to consumers.

18. CVS is entering into the Agreement for settlement purposes only, and has made a business decision to avoid additional expenses and distractions related to further administrative process and litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing on the part of CVS.

Agreement of the Parties

19. Under the CPSA, the Commission has jurisdiction over this matter and over CVS.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by CVS, or a determination by the Commission, that CVS knowingly violated the CPSA.

21. In settlement of Staff's allegations, CVS shall pay a civil penalty in the amount of forty-five thousand dollars ($45,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the Commission via *http://www.pay.gov.*

22. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

23. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, CVS knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether CVS failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

24. The Commission may publicize the terms of the Agreement and the Order.

25. The Agreement and the Order shall apply to, and be binding upon, CVS and each of its successors and assigns.

26. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject CVS and each of its successors and assigns to appropriate legal action.

27. The Agreement may be used in interpreting the Order. Understandings,

agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

28. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and CVS agree that severing the provision materially affects the purpose of the Agreement and the Order.

CVS Pharmacy, Inc.

Dated: June 21, 2011.

Judith Samsoni, Vice President,
CVS Pharmacy, Inc.,
One CVS Drive,
Woonsocket, RI 02895.

Dated: June 21, 2011.

Stephen P. Murphy, Esq.,
Reed Smith LLP,
1301 K Street, NW.,
Suite 1100, East Tower,
Washington, DC 20005–3373.
Counsel for CVS Pharmacy, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey,
General Counsel.

Mary B. Murphy,
Assistant General Counsel, Office of the General Counsel.

Dated: June 28, 2011.

Seth B. Popkin, *Lead Trial Attorney, Division of Compliance, Office of the General Counsel.*

Order

Upon consideration of the Settlement Agreement entered into between CVS Pharmacy, Inc. (''CVS'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over CVS, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that CVS shall pay a civil penalty in the amount of forty-five thousand dollars ($45,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the Commission via *http://www.pay.gov.* Upon the failure of CVS to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by CVS at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 3rd day of August, 2011.

By order of the commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–20216 Filed 8–9–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0088]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, Department of Defense.

ACTION: Notice to delete two systems of records.

SUMMARY: The Defense Information Systems Agency is deleting two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 9, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number 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 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. Jeanette M. Weathers-Jenkins, Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705, or by phone at (703) 681–2103.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices 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 Defense Information Systems Agency proposes to delete two systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 5, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K240.02

SYSTEM NAME:

Sensitive Compartmented Info (SCI) Posn/Pers Accountability System (February 22, 1993, 58 FR 10562).

REASON:

DISA does not upload or input PII into the Sensitive Compartmented Info (SCI) Posn/Pers Accountability System also known as Scattered Castles. The PII within the database is covered by DPR 34, Defense Civilian Personnel Data System (April 21, 2006, 71 FR 20649).

K240.08

SYSTEM NAME:

Security Violation Case File (February 22, 1993, 58 FR 10562).

REASON:

Records were destroyed in accordance with DISA's records management disposition and destruction requirements.

[FR Doc. 2011–20256 Filed 8–9–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Intelligence Agency is proposing to alter a system to

its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 9, 2011 unless comments are received that would 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. Theresa Lowery at (202) 231–1193, Defense Intelligence Agency, DAN 1–C, 600 McDill Blvd. Washington, DC 20340–0001.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency system of records notices 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 **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a of the Privacy Act of 1974, as amended, was submitted on January 28, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the 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: July 8, 2011.

Patricia Toppings

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0900

SYSTEM NAME:

Accounts Receivable, Indebtedness and Claims (June 5, 2006, 71 FR 32316).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Current and former Defense Intelligence Agency civilian and contract employees, military assignees and other individuals regarding payments, indebtedness and claims to the Defense Intelligence Agency.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), current address and telephone number, place and date of birth; financial records such as payments, indebtedness, claims, bills, checks, statements of loss or damages, receipts, investigative and court records, financial statements, credit reports, financial statements; time and attendance records and leave and earnings statements.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 5512, Withholding Pay and Indebtedness; 5 U.S.C. 5513, Withholding Pay-Credit disallowed or charge raised for payment; 5 U.S.C. 5514, Installment Deduction For Indebtedness to the U.S.; 5 U.S.C. 5584, Claims for Overpayment of Pay, Allowances and of Travel, Transportation and Relocation Expenses and Allowances; 5 U.S.C. 5705, Advancements and Deductions; 10 U.S.C. 2274, Space Surveillance Network; 31 U.S.C. 3322, Disbursing Official; 31 U.S.C. 3527, General Authority to Issue Checks; 31 U.S.C. 3702, Authority to Settle Claims; 31 U.S.C. 3711, Collection and Compromise; 31 U.S.C. 3716, Administrative Offset; 31 U.S.C. 3717, Interest and Penalty on Claims; 31 U.S.C. 3718, Contracts for Collection Services; 40 U.S.C. 705, Handling of Proceeds from Disposal; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''The system will manage records used in cases regarding claims, payments and indebtedness associated with the Defense Intelligence Agency. Information is used to comply with regulatory requirements and to facilitate collections and/or payments.''

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 contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the DIA's 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:

Delete entry and replace with ''Paper records and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Last name and Social Security Number (SSN).''

SAFEGUARDS:

Delete entry and replace with ''Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and User IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Temporary; Cut off each Fiscal Year (FY). Hold 1 year in current files area and transfer to Washington National Records Center, destroy 6 years and 3 months after period covered by account. Electronic Records are deleted from the database, paper records are destroyed by shredding or burning.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Financial Policy, Financial Operations and Managerial Accounting Branch, Defense Intelligence Agency, 600 MacDill Blvd., Washington, DC 20340–5100.''

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 DIA Freedom of Information Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Request should contain the individual's full name, current address, and telephone number.''

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 the DIA Freedom of Information Office (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Request should contain the individual's full name, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001 ''Defense Intelligence Agency Privacy Program''; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individuals; DoD and other Federal, state and local financial records systems; financial, educational and medical institutions; and open source information, such as property tax records.''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with ''During the course of Accounts Receivable, Indebtedness and Claims actions, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this correspondence case record, the Defense Intelligence Agency hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 319.''

* * * * *

LDIA 0900

SYSTEM NAME:

Accounts Receivable, Indebtedness and Claims.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Defense Intelligence Agency civilian and contract employees, military assignees and other individuals regarding payments, indebtedness and claims to the Defense Intelligence Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), current address and telephone number, place and date of birth; financial records such as payments, indebtedness, claims, bills, checks, statements of loss or damages, receipts, investigative and court records, financial statements, credit reports, financial statements; time and attendance records and leave and earnings statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5512, Withholding Pay and Indebtedness; 5 U.S.C. 5513, Withholding Pay-Credit disallowed or charge raised for payment; 5 U.S.C. 5514, Installment Deduction For Indebtedness to the U.S.; 5 U.S.C. 5584, Claims for Overpayment of Pay, Allowances and of Travel, Transportation and Relocation Expenses and Allowances; 5 U.S.C. 5705, Advancements and Deductions; 10 U.S.C. 2274, Space Surveillance Network; 31 U.S.C. 3322, Disbursing Official; 31 U.S.C. 3527, General Authority to Issue Checks; 31 U.S.C. 3702, Authority to Settle Claims; 31 U.S.C. 3711, Collection and Compromise; 31 U.S.C. 3716, Administrative Offset; 31 U.S.C. 3717, Interest and Penalty on Claims; 31 U.S.C. 3718, Contracts for Collection Services; 40 U.S.C. 705, Handling of Proceeds from Disposal; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The system will manage records used in cases regarding claims, payments and indebtedness associated with the Defense Intelligence Agency. Information is used to comply with regulatory requirements and to facilitate collections and/or payments.

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 contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the DIA's 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 records and electronic storage media.

RETRIEVABILITY:

Last name and Social Security Number (SSN).

Safeguards:

Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and User IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Temporary; Cut off each Fiscal Year (FY). Hold 1 year in current files area

and transfer to the Washington National Records Center, destroy 6 years and 3 months after period covered by account. Electronic Records are deleted from the database, paper records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial Policy, Financial Operations, and Managerial Accounting Branch, Defense Intelligence Agency, 600 MacDill Blvd., Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Freedom of Information Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Request should contain the individual's full name, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to the DIA Freedom of Information Office (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Request should contain the individual's full name, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001 ''Defense Intelligence Agency Privacy Program''; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals; DoD and other Federal, state and local financial records systems; financial, educational and medical institutions; and open source information, such as property tax records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of Accounts Receivable, Indebtedness and Claims actions, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this correspondence case record, the Defense Intelligence Agency hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 319.

[FR Doc. 2011–20237 Filed 8–9–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE, Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2012 Continued Health Care Benefit Program Premium Update

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of Updated Continued Health Care Benefit Program Premiums for Fiscal Year 2012.

SUMMARY: This notice provides the updated Continued Health Care Benefit Program premiums for Fiscal Year 2012. CHCBP is a premium-based health care program that offers transitional health coverage after TRICARE eligibility ends. CHCBP benefits are comparable to TRICARE Standard with similar benefits, providers, and program rules.

DATES: *Effective Date:* The Fiscal Year 2012 rates contained in this notice are effective for services on or after October 1, 2011.

ADDRESSES: TRICARE Management Activity (TMA), Policy and Benefits Branch, 5111 Leesburg Pike, Suite 810A, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Mark A. Ellis, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 30, 1994, (59 FR 49818) set forth rules to implement the Continued Health Care Benefit Program (CHCBP) required by 10 United States Code § 1078a. CHCBP is a premium-based health care program that offers transitional health coverage after TRICARE eligibility ends. CHCBP benefits are comparable to TRICARE Standard with similar benefits, providers, and program rules. Included in this final rule were provisions for updating the CHCBP premiums for each federal Fiscal Year. As stated in the final rule, the premiums are based on Federal Employee Health Benefit Program employee and agency contributions required for a comparable health benefits plan, plus an administrative fee. Premiums may be revised annually and shall be published annually for each Fiscal Year.

The TRICARE Management Activity has updated the quarterly premiums for Fiscal Year 2012 as shown below.

Quarterly CHCBP Premiums for Fiscal Year 2012

Individual—$1,065.
Family—$2,390.

The above premiums are effective for services rendered on or after October 1, 2011.

Dated: July 8, 2011.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–20236 Filed 8–9–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Hospital Outpatient Radiology Discretionary Appeal Adjustments

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: This notice is to advise hospitals of an opportunity for net adjusted payments for radiology services for which TRICARE payments were not comparable to the pre-Outpatient Prospective Payment System (OPPS) Medicare fair rates for the period

August 1, 2003, to May 1, 2009 (or other appropriate end date for OPPS-exempt hospitals.)

DATES: The agency must receive a hospital's request on or before June 23, 2011, or October 11, 2011 for hospitals that did not receive notification by letter.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Martha M. Maxey, Medical Benefits and Reimbursement Branch, TMA, telephone (303) 676–3627.

SUPPLEMENTARY INFORMATION: In reviewing payments for hospital outpatient services, DoD has determined that, for radiology services specified in the regulation as being reimbursed under the allowable charge methodology, the technical component of the allowable charge did not approximate the Medicare fair payment for such hospital services as well as it could have. That is, in looking at the Medicare reimbursement methodologies in existence prior to adoption of Medicare's OPPS in 2000, (methodologies resulting in fair payment for Federal health care, which TRICARE allowable charges for hospitals outpatient services were intended to emulate), some radiology services were underpaid in comparison.

The National Defense Authorization Act for Fiscal Year 2002 required that TRICARE use Medicare reimbursement rates for hospitals to the extent practicable. While payments were made in accordance with 32 Code of Federal Regulation, 199.14, there is a basis for TRICARE to make discretionary net adjusted payments for radiology services for which TRICARE payments were not comparable to the pre-OPPS Medicare fair rates for the period in question.

On April 25, 2011, TMA mailed letters to thousands of hospitals notifying them of this opportunity. The hospitals (or their recovery agents) have until June 23, 2011, 60 days from the date of notification, to file an appeal for pay adjustments that will be adjudicated by TMA. Hospitals that did not receive notification by mail have 60 days from August 10, 2011.

Critical Access Hospitals (CAHs) which are not subject to TRICARE's OPPS shall submit a request for the period August 1, 2003, to November 30, 2009. As of December 1, 2010, the payments to CAHs are based on reasonable cost and thus potential adjustments would not apply. Other hospitals not subject to OPPS (such as Cancer and Children's hospitals) shall submit a request for the period August 1, 2003, to December 31, 2010.

The payment adjustment process along with the notification letter to hospitals can be viewed at TMA's Web site at: *http://www.tricare.mil/RadiologyDiscretionaryAppealAdjustments.*

Dated: July 8, 2011.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–20235 Filed 8–9–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 11, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 4, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: Teaching and Learning International Survey (TALIS) 2013 Field Trial.

OMB Control Number: Pending .

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 594.

Total Estimated Number of Annual Burden Hours: 1,265.

Abstract: Teaching and Learning International Survey (TALIS), is an international survey of the teaching workforce, teaching as a profession, and the learning environments of schools. Data are collected through questionnaires from individual teachers and their school principals in lower secondary schools (grades 7, 8 and 9) in the United States. TALIS' main objective is to help countries review current policy and develop informed education policy by providing accurate and relevant international indicators on teachers and teaching. TALIS offers an opportunity for teachers and school principals to provide their perspectives on the state of education in their own countries. Both teacher and principal questionnaires include questions about teacher and principal background and characteristics; teacher and principal professional development; school leadership and management; teacher appraisal and feedback; teachers' instructional beliefs and pedagogical practices; school climate and ethos;

student characteristics as perceived by the teacher; and teacher efficacy and job satisfaction. TALIS is sponsored by the Organization for Economic Cooperation and Development and managed in the United States by the National Center for Education Statistics. This submission requests Office of Management and Budget (OMB)'s clearance for (1) A spring 2012 field trial; (2) a fall 2012 recruitment of schools for the spring 2013 main study data collection; and (3) a 60-day **Federal Register** notice waiver for the next OMB clearance package to be submitted in September of 2012 for the spring 2013 main data collection..

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 4696. 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. 2011–20280 Filed 8–9–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on DOE's intent to request OMB to renew Information Collection Request Title: OE Recovery Act Financial Assistance Grants, OMB Control No. 1910–5149 for an additional four years 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.

DATES: Comments regarding this proposed information collection must be received on or before October 11, 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:

Matthew Grosso, U.S. Department of Energy, OE/Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585 or by fax at 202–586–5860, or by e-mail at *matthew.grosso@hq.doe.gov.*; and

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Matthew Grosso at *matthew.grosso@hq.doe.gov,* or *http://www.oe.energy.gov/node/11695.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5149; (2) Information Collection Request Title: OE Recovery Act Financial Assistance Grants; (3) Type of Request: *Renewal;* (4) Purpose: To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (especially important for Recovery Act funds); (5) Annual Estimated Number of Respondents: 138; (6) Annual Estimated Number of Total Responses: 1,656; (7) Annual Estimated Number of Burden Hours: 13,248; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $1,035,000 for the first year, $552,000 each subsequent year.

Authority: Title V, Subtitle E of the Energy Independence and Security Act of 2007 (EISA; Pub. L. 110–140).

Issued in Washington, DC on August 4, 2011.

Terri T. Lee,

Chief Operating Officer, Electricity Delivery and Energy Reliability.

[FR Doc. 2011–20334 Filed 8–9–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–516A–001]

Commission Information Collection Activities (FERC 516A); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 27, 2011.

(76 FR 30927) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by September 9, 2011.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0203 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed either on paper or on CD/DVD, and should refer to Docket No. IC11–516A–001. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://*

www.ferc.gov/help/submission-guide.asp. eFiling and eSubscription are not available for Docket No. IC11–516A–001, due to a system issue.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–516A, ''Small Generator Interconnection Agreements'' (OMB No. 1902–0203), is used by the Commission to enforce the statutory provisions of sections 205 and 206 of the Federal Power Act (FPA), as amended by Title II, section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 825d). FPA sections 205 and 206 require the Commission to remedy undue discriminatory practices within interstate electric utility operations.

The Commission amended its regulations in 2005 with Order No. 2006 to require public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to amend their Open Access Transmission Tariffs (OATTs) to include a Commission-approved *pro forma* interconnection procedures document and a standard interconnection agreement for the interconnection of generating facilities having a capacity of no more than 20 MW (Small Generators).[1]

Prior to Order No. 2006, the Commission's policy had been to address interconnection issues on a case-by-case basis. Although a number of transmission providers had filed interconnection procedures as part of their OATTs, many industry participants remained dissatisfied with existing interconnection policies and procedures. With an increasing number of interconnection-related disputes, it became apparent that the case-by-case approach was an inadequate and inefficient means to address interconnection issues. This prompted the Commission to adopt, in Order No. 2006, a single set of procedures for jurisdictional transmission providers and a single uniformly applicable interconnection agreement for transmission providers to use in interconnecting with Small Generators.

With the incorporation of these documents in their OATTs, there is no longer a need for transmitting utilities to file case-by-case interconnection agreements and procedures with the Commission. However, on occasion, circumstances warrant non-conforming agreements or a situation-specific set of procedures. These non-conforming documents must be filed in their entirety with the Commission for review and action.

The information collected is in response to a mandatory requirement. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 35, 35.28(f).

ACTION: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
238 (maintenance of documents)	1	1	238
40 (filing of non-conforming agreements)	1	25	1,000
278 Total Respondents			
Total			1,238

There was a one-time start-up cost to comply with Order No. 2006 requirements that was included when the Commission first sought authorization for this information in 2005 and was removed in the last submission to OMB under this collection of information. The estimated burden of the continued requirement to maintain the procedures and agreement documents in transmission providers' OATTs is reflected herein as is the filing of non-conforming interconnection procedures and agreements that occur on occasion.

The estimated total cost to respondents is $84,739 (rounded) [1,238 hours divided by 2,080 hours per year, times $142,372 [2] equals $84,739]. The average cost per respondent is calculated to be $305 (rounded) [$84,739 divided by 278].

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the

[1] *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, 70 FR 34189 (May 12, 2005), FERC Stats. & Regs. ¶ 31,180 (2005).

[2] Average annual salary per employee.

burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Dated: August 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20264 Filed 8–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3107–004]

Newfound Hydroelectric Company, KTZ Hydro, LLC; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

On July 25, 2011, Newfound Hydroelectric Company (transferor) and KTZ Hydro, LLC (transferee) filed an application for transfer of license for the Newfound Hydroelectric Project, No. 3107, located on the Newfound River in Grafton County, New Hampshire.

Applicants seek Commission approval to transfer the license for the Newfound Hydroelectric Project from transferor to transferee.

Applicants' Contact: Transferor: Nathan Wechsler, Newfound Hydroelectric Company, 31 Bristol Drive, Boynton Beach, FL 33436, (407) 736–5360. Transferee: Robert King, KTZ Hydro, LLC, 42 Hurricane Rd., Keene, NH 03431, (603) 352–3444.

FERC Contact: Jeremy M. Jessup (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–3107) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: August 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20268 Filed 8–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13160–002]

Red River Hydro LLC; Notice of Application Tendered For Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. Type of Application: New Major License.

b. Project No.: 13160–002.

c. Date Filed: July 29, 2011.

d. Applicant: Red River Hydro LLC (Red River), a wholly-owned subsidiary of Symbiotics LLC.

e. Name of Project: Overton Lock and Dam Hydroelectric Project.

f. Location: The project would be located on the Red River in Rapides Parish, Louisiana at an existing lock and dam owned and operated by the U.S. Corps of Engineers (Corps). The project would occupy 42.5 acres of federal lands managed by the Corps.

g. Filed Pursuant to: Federal Power Act, 16 USC 791(a)–825(r).

h. Applicant Contact: Mr. Brent L. Smith, Chief Operating Officer, Symbiotics LLC 371 Upper Terrace, Suite 2, Bend, OR 97702; Telephone (541)-330–8779.

i. FERC Contact: Lesley Kordella, (202) 502–6406 or *Lesley.Kordella@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. The Project Description: The project would be located at an existing lock and dam owned and operated by the Corps-Vicksburg District. The existing lock and dam are part of the J. Bennett Johnston Waterway, which was authorized by Congress in 1968 to stabilize river banks, straighten river bends, and maintain a 9-foot-deep, 200-foot-wide channel for boat traffic. The waterway consists of five locks and dams and a number of cutoffs to shorten the river.

The existing Overton dam is a concrete gravity structure that is 104 feet in height and 914 feet in length. The spillway consists of five 60-foot-wide Tainter gates. The navigation lock is 84 feet wide by 685 feet long. The purpose of the lock and dam system is navigation and not storage. The upper pool above the dam is commonly referred to as ''Pool 2''. The Corps maintains the upper pool at an elevation of 64 feet. Pool 2 has a surface area of approximately 3,750 acres and a storage capacity of approximately 67,500 acre-feet.

The proposed Overton Lock and Dam Project would consist of: (1) A powerhouse located on the southwest bank of the river at the existing dam's right abutment; (2) a headrace; (3) a tailrace; (4) a new switchyard; (5) 3.9 miles of 138-kilovolt (kV) above-ground transmission line; (6) three turbine-generator units for a combined installed capacity of 78 megawatts; and (7) appurtenant facilities. The projected annual energy generation would be 255.7 gigawatt hours.

The project would operate in a run-of-release mode utilizing releases from Pool 2 as they are dictated by the Corps, with no proposed change to the Corps' facility operation. In addition, no changes to the reservoir pool elevations or downstream river flows are proposed. The project would generate power using flows between 2,700 cfs (cubic feet per second) and 49,800 cfs. If flows are less than 2,700 cfs, all flow would go through the Corps' gates and the project would then be offline. When flows are greater than 49,800 cfs, the excess flow would be directed through the Corps gates.

l. Locations of the Application: A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances

related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis (*when* FERC *approved studies are complete*).	October 2011.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	December 2011.
Commission issues Non-Draft EA.	April 2012.
Comments on EA	May 2012.
Modified terms and conditions.	July 2012.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: August 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20269 Filed 8–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2106–000]

Pacific Gas and Electric Company; Notice of Authorization for Continued Project Operation

On June 16, 2009, Pacific Gas and Electric Company, licensee for the McCloud-Pit Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The McCloud-Pit Hydroelectric Project is located on the McCloud and Pit Rivers in Shasta County, California.

The license for Project No. 2106 was issued for a period ending July 31, 2011. Section 15(a)(1) of the FPA, 16 USC 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 USC 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2106 is issued to the Pacific Gas and Electric Company for a period effective August 1, 2011 through July 31, 2012, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 2012, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the Pacific Gas and Electric Company is authorized to continue operation of the McCloud-Pit Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: August 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20267 Filed 8–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–101–000.

Applicants: Rumford Paper Company, Rumford Falls Hydro LLC.

Description: Application under Section 203 of the FPA of Rumford Paper Company and Rumford Falls Hydro LLC for the return of certain jointly owned electrical delivery facilities.

Filed Date: 08/03/2011.

Accession Number: 20110803–5063.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4195–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc. submits tariff filing per 35.1: Rate Schedule No. 94 to be effective 10/1/2011.

Filed Date: 08/03/2011.

Accession Number: 20110803–5000.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4196–000.

Applicants: Michigan Electric Transmission Company, Midwest Independent Transmission System Operator, Inc.

Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.13(a)(2)(iii): METC-Gratiot County Wind E&P to be effective 10/3/2011.

Filed Date: 08/03/2011.

Accession Number: 20110803–5013.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4197–000.

Applicants: Michigan Electric Transmission Company, LLC, Midwest Independent Transmission System Operator, Inc.

Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.13(a)(2)(iii): METC-Lowell Light and Power IFA to be effective 10/3/2011.

Filed Date: 08/03/2011.

Accession Number: 20110803–5014.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4198–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): ITC Midwest-Lost Lakes E&P to be effective 10/3/2011.

Filed Date: 08/03/2011.

Accession Number: 20110803–5015.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4199–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc.

submits tariff filing per 35.13(a)(2)(iii): ITCM-City of Jackson IA to be effective 10/3/2011.

Filed Date: 08/03/2011.

Accession Number: 20110803–5016.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4202–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company cancellation of FERC Electric Rate Schedule No. 22.

Filed Date: 08/03/2011.

Accession Number: 20110803–5057.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4203–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company cancellation of FERC Electric Rate Schedule No. 21.

Filed Date: 08/03/2011.

Accession Number: 20110803–5058.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4204–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company Cancellation of FERC Electric Rate Schedule No. 35.

Filed Date: 08/03/2011.

Accession Number: 20110803–5059.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4205–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company Cancellation of FERC Electric Rate Schedule No. 30.

Filed Date: 08/03/2011.

Accession Number: 20110803–5060.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4206–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company Cancellation of FERC Electric Rate Schedule No. 15.

Filed Date: 08/03/2011.

Accession Number: 20110803–5062.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4207–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company cancellation of FERC Electric Rate Schedule No. 23.

Filed Date: 08/03/2011.

Accession Number: 20110803–5068.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4208–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company cancellation of FERC Electric Rate Schedule No. 26.

Filed Date: 08/03/2011.

Accession Number: 20110803–5069.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4209–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company cancellation of FERC Electric Rate Schedule No. 25.

Filed Date: 08/03/2011.

Accession Number: 20110803–5070.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4210–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company Cancellation of FERC Electric Rate Schedule No. 47.

Filed Date: 08/03/2011.

Accession Number: 20110803–5071.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: ER11–4211–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company Cancellation of FERC Electric Rate Schedule No. 37.

Filed Date: 08/03/2011.

Accession Number: 20110803–5074.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before *5 p.m.* Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 3, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20262 Filed 8–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2906–002; ER10–2908–002; ER10–2911–002; ER10–2909–002; ER10–2910–002; ER10–2900–002; ER10–2899–002; ER10–2898–002; ER09–621–007.

Applicants: Morgan Stanley Capital Group Inc., MS Solar Solutions Corp, Naniwa Energy LLC, Power Contract Financing II, Inc., Power Contract Financing II, L.L.C., South Eastern Generating Corp., South Eastern Electric Development Corp., Utility Contract Funding II, LLC, TAQA Gen X LLC.

Description: Notice of Non-material Change in Status of Morgan Stanley Capital Group Inc., *et al.*

Filed Date: 08/01/2011.

Accession Number: 20110801–5226.

Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–2495–001.

Applicants: PPL Renewable Energy, LLC.

Description: PPL Renewable Energy, LLC submits tariff filing per 35: PPL Renewable Energy, LLC Compliance Filing to be effective 5/2/2011.

Filed Date: 08/01/2011.

Accession Number: 20110801–5159.

Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–2635–001; ER11–2637–001; ER11–39–002.

Applicants: Synergics Roth Rock Wind Energy, LLC, Synergics Roth Rock North Wind Energy, LLC, Flat Water Wind Farm, LLC

Description: Notice of Non-Material Change in Status of Synergics Roth Rock Wind Energy, LLC, *et al.*

Filed Date: 08/01/2011.

Accession Number: 20110801–5214.

Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–3352–001.

Applicants: Public Service Electric and Gas Company, PJM Interconnection, L.L.C.

Description: Public Service Electric and Gas Company submits tariff filing per 35: PSE&G submits update to PJM Tariff Attach H–10A per Order in Docket ER11–3352 to be effective 6/14/2011.

Filed Date: 08/01/2011.

Accession Number: 20110801–5147.

Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4140–001.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.17(b): Errata to Niagara Mohawk/WM Renewable SGIA to be effective 6/23/2011.

Filed Date: 08/01/2011.

Accession Number: 20110801–5153.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4167–000.
Applicants: California Power Holdings, LLC.
Description: California Power Holdings, LLC submits tariff filing per 35.13(a)(2)(iii: Notice of Change in Status; Amendment to MBR; Request for Certain Waivers to be effective 7/30/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5002.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4167–000.
Applicants: California Power Holdings, LLC.
Description: California Power Holdings, LLC Requested Effective Date.
Filed Date: 08/01/2011.
Accession Number: 20110801–5116.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4174–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Revisions to the Tariff Schedules 9–1 to 9–5 to Decrease the Stated Rates to be effective 10/1/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5134.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4175–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 313 between APS and Sun Edison LLC to be effective 8/31/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5143.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4176–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2011–08–01 CAISO's SPTC Amendment to be effective 10/1/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5149.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4177–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 607R14 Westar Energy, Inc. NITSA NOA to be effective 7/1/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5150.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4178–000.
Applicants: Synergics Roth Rock Wind Energy, LLC.
Description: Synergics Roth Rock Wind Energy, LLC submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to be effective 6/30/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5152.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4179–000.
Applicants: Synergics Roth Rock North Wind Energy, LLC.
Description: Synergics Roth Rock North Wind Energy, LLC submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to be effective 6/30/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5156.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4180–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2166 Westar Energy, Inc. NITSA NOA to be effective 7/1/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5158.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4181–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position W1–129; Original Service Agreement No. 2979 to be effective 6/30/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5163.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4182–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Revisions to the PJM Reliability Assurance Agreement, Schedule 17 to be effective 6/1/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5165.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4183–000.
Applicants: MXenergy Electric Inc.
Description: MXenergy Electric Inc. submits tariff filing per 35.13(a)(2)(iii: MXenergy Electric Inc. Second Revised MBR Tariff to be effective 8/2/2011.
Filed Date: 08/01/2011.
Accession Number: 20110801–5170.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: ER11–4185–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Annual CONE Recalculation of Midwest Independent Transmission System Operator, Inc.
Filed Date: 08/01/2011.
Accession Number: 20110801–5212.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–2–000.
Applicants: Bluegrass Generation Company, L.L.C., DeSoto County Generating Company, LLC, Las Vegas Power Company, LLC, LS Power Marketing, LLC, LSP Safe Harbor Holdings, LLC, LSP University Park, LLC, Renaissance Power, L.L.C., Riverside Generating Company, L.L.C., Rocky Road Power, LLC, Tilton Energy LLC, University Park Energy, LLC, and Wallingford Energy LLC.
Description: Quarterly Land Acquisition Report of Bluegrass Generation Company, L.L.C., *et al.*
Filed Date: 08/01/2011.
Accession Number: 20110801–5196.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: LA11–2–000.
Applicants: Auburndale Peaker Energy Center, L.L.C., Bethpage Energy Center 3, LLC, Broad River Energy LLC, Calpine Bethlehem, LLC, Calpine Construction Finance Company, L.P., Calpine Energy Services, L.P., Calpine Gilroy Cogen, L.P., Calpine Greenleaf, Inc., Calpine Mid-Atlantic Generation, LLC, Calpine Mid-Atlantic Marketing, LLC, Calpine Mid-Merit, LLC, Calpine New Jersey Generation, LLC, Calpine Newark, LLC, Calpine Oneta Power, LLC, Calpine Philadelphia Inc., Calpine Power America—CA, LLC, Calpine Power America—OR, LLC, Calpine Vineland Solar, LLC, Carville Energy LLC, CES Marketing V, L.P., CES Marketing IX, LLC, CES Marketing X, LLC, Columbia Energy LLC, CPN Bethpage 3rd Turbine, Inc., Creed Energy Center, LLC, Decatur Energy Center, LLC, Delta Energy Center, LLC, Geysers Power Company, LLC, Gilroy Energy Center, LLC, Goose Haven Energy Center, LLC, Hermiston Power, LLC, KIAC Partners, Los Esteros Critical Energy Facility, LLC, Los Medanos Energy Center, LLC, Mankato Energy Center, LLC, Metcalf Energy Center,

LLC, Mobile Energy, LLC, Morgan Energy Center, LLC, Nissequogue Cogen Partners, Otay Mesa Energy Center, LLC, Pastoria Energy Center, LLC, PCF2, LLC, Pine Bluff Energy, LLC, Power Contract Financing, L.L.C., Riverside Energy Center, LLC, RockGen Energy, LLC, Santa Rosa Energy Center, LLC, South Point Energy Center, LLC, TBG Cogen Partners, Zion Energy LLC.

Description: Quarterly Land Aquisition Report of Calpine Energy Services, L.P., *et al.*

Filed Date: 08/01/2011.

Accession Number: 20110801–5211.

Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: LA11–2–000.

Applicants: Alabama Electric Marketing, LLC, Big Sandy Peaker Plant, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, High Desert Power Project, LLC, Kiowa Power Partners, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, New Mexico Electric Marketing, LLC, Rolling Hills Generating, L.L.C., Tenaska Alabama Partners, L.P., Tenaska Alabama II Partners, L.P., Tenaska Frontier Partners, Ltd., Tenaska Gateway Partners, Ltd., Tenaska Georgia Partners, L.P., Tenaska Power Services Co., Tenaska Virginia Partners, L.P., Tenaska Washington Partners, L.P., Texas Electric Marketing, LLC, TPF Generation Holdings, LLC, Wolf Hills Energy, LLC.

Description: Quarterly Land Acquisition Report of Alabama Electric Marketing, LLC, *et al.*

Filed Date: 08/01/2011.

Accession Number: 20110801–5213.

Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: LA11–2–000.

Applicants: Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Backbone Mountain Windpower LLC, Badger Windpower, LLC, Baldwin Wind, LLC, Bayswater Peaking Facility, LLC, Blythe Energy, LLC, Butler Ridge Wind Energy Center, LLC, Calhoun Power Company I, LLC, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, Crystal Lake Wind III, LLC, Day County Wind, LLC, Diablo Winds, LLC, Doswell Limited Partnership, Elk City Wind, LLC, Elk City II Wind, LLC, ESI Vansycle Partners, L.P., Florida Power & Light Co., FPL Energy Burleigh County Wind, LLC, FPL Energy Cabazon Wind, LLC, FPL Energy Cape, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Maine Hydro LLC, FPL Energy Marcus Hook, L.P., FPL Energy MH50 L.P., FPL Energy Montezuma Wind, LLC, FPL Energy Mower County, LLC, FPL Energy New Mexico Wind, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, FPL Energy Sooner Wind, LLC, FPL Energy South Dakota Wind, LLC, FPL Energy Stateline II, Inc., FPL Energy Vansycle, LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, FPL Energy Wyoming, LLC, FPLE Rhode Island State Energy, L.P., Garden Wind, LLC, Gray County Wind Energy, LLC, Hatch Solar Energy Center I, LLC, Hawkeye Power Partners, LLC, High Majestic Wind Energy Center, LLC, High Winds, LLC, Jamaica Bay Peaking Facility, LLC, Lake Benton Power Partners II, LLC, Langdon Wind, LLC, Logan Wind Energy LLCMeyersdale Windpower LLC, Mill Run Windpower, LLC, Minco Wind, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Power Marketing, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Services Massachusetts, LLC, Northeast Energy Associates, LP, North Jersey Energy Associates, LP, Northern Colorado Wind Energy, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Paradise Solar Urban Renewal, L.L.C., Peetz Table Wind Energy, LLC, Pennsylvania Windfarms, Inc., Red Mesa Wind, LLC, Sky River LLC, Somerset Windpower, LLC, Story Wind, LLC, Victory Garden Phase IV, LLC, Waymart Wind Farm, L.P., Wessington Wind Energy Center, LLC, White Oak Energy, LLC, Wilton Wind II, LLC, NextEra Energy Companies.

Description: Second Quarter 2011 Site Control Quarterly Filing of the NextEra Energy Companies.

Filed Date: 08/01/2011.

Accession Number: 20110801–5219.

Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: LA11–2–000.

Applicants: Macho Springs Power I, LLC.

Description: Land Acquisition Report for Q2 2011 of Macho Springs Power I, LLC.

Filed Date: 08/01/2011.

Accession Number: 20110801–5225.

Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–

3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20270 Filed 8–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3814–001.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.17(b): Amendment to NYISO June 16, 2011 tariff revisions in OATT Attachment CC to be effective 8/16/2011.
Filed Date: 08/02/2011.
Accession Number: 20110802–5120.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Docket Numbers: ER11–4172–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): 1636R4 Kansas Electric Power Coop., Inc. NISTA NOA Errata Filing to be effective 7/1/2011.
Filed Date: 08/02/2011.
Accession Number: 20110802–5122.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4176–001.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.17(b): 2011–08–02 CAISO Errata to SPTC Amendment to be effective 10/1/2011.
Filed Date: 08/02/2011.
Accession Number: 20110802–5123.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4184–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Modification of its Transmission Depreciation Rate to be effective 10/1/2011.
Filed Date: 08/02/2011.
Accession Number: 20110802–5000.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4184–001.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.17(b): Amendment to the APS depreciation filing to add affidavit of Z. Fryer to be effective 10/1/2011.
Filed Date: 08/02/2011.
Accession Number: 20110802–5118.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4186–000.
Applicants: Wolverine Power Supply Cooperative, Inc., Midwest Independent Transmission System Operator, Inc.
Description: Wolverine Power Supply Cooperative, Inc. submits tariff filing per 35.13(a)(2)(iii: Wolverine-Consumers IAs to be effective 1/14/2011.
Filed Date: 08/02/2011.
Accession Number: 20110802–5056.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4187–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits tariff filing per 35.13(a)(2)(iii: Restated Engineering & Procurement Agreement to be effective 8/2/2011.
Filed Date: 08/02/2011.
Accession Number: 20110802–5057.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4188–000.
Applicants: Carolina Power & Light Company.
Description: Notice of Cancellation of Netting Agreements of Carolina Power & Light Company.
Filed Date: 08/02/2011.
Accession Number: 20110802–5090.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4189–000.
Applicants: Florida Power Corporation.
Description: Notice of Cancellation of Netting Agreements of Florida Power Corporation under ER11–4189.
Filed Date: 08/02/2011.
Accession Number: 20110802–5092.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4190–000.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Allegheny Energy Supply Company, LLC submits tariff filing per 35: AES ER11–3813 Amendment Filing to be effective 6/1/2011 under ER11–4190 Filing Type: 70
Filed Date: 08/02/2011.
Accession Number: 20110802–5093.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4191–000.
Applicants: Portland General Electric Company.
Description: Portland General Electric Company submits tariff filing per 35.13(a)(2)(iii: Montana Intertie Agreement to be effective 10/1/2011 under ER11–4191 Filing Type: 10
Filed Date: 08/02/2011.
Accession Number: 20110802–5112.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4192–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits tariff filing per 35.13(a)(2)(iii: Avista Corp FERC Rate Schedule No. 183 to be effective 10/1/2011 under ER11–4192 Filing Type: 10
Filed Date: 08/02/2011.
Accession Number: 20110802–5116.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4193–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: Montana Intertie Project Transmission Agreement to be effective 10/1/2011 under ER11–4193 Filing Type: 10
Filed Date: 08/02/2011.
Accession Number: 20110802–5119.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4194–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii: Rate Schedule FERC No. 185—Montana Intertie Project Transmission Agreement to be effective 10/1/2011 under ER11–4194 Filing Type: 10.
Filed Date: 08/02/2011.
Accession Number: 20110802–5121.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–4200–000.
Applicants: TC Ravenswood, LLC.
Description: Motion of TC Ravenswood, LLC for waiver of New York Independent System Operator, Inc.'s tariff provisions regarding black start and system restoration procedures; and request for expedited treatment.
Filed Date: 08/02/2011.
Accession Number: 20110802–5159.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH11–19–000.
Applicants: Enbridge Inc.
Description: Notice of Materical Change in Facts of Enbridge Inc. under PH11–19.

Filed Date: 08/02/2011.

Accession Number: 20110802–5162.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 3, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–20293 Filed 8–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–57–000]

Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Texas, Inc.; Notice of Complaint

Take notice that on August 4, 2011, the Louisiana Public Service Commission (Complainant) filed a formal complaint against Entergy Corp., Entergy Services, Inc., Entergy Louisiana, L.L.C., Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC, and Entergy Texas, Inc. (collectively, Entergy or Respondent) pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825(e) and 18 CFR 386.206 of the Commission's Rules of Practice and Procedures, seeking to change the rates included in the Entergy rough equalization bandwidth formula found in Service Schedule MSS–3 of the Entergy System Agreement related to the Little Gypsy Repowering Project cancellation costs.

The Louisiana Public Service Commission certifies that copies of the complaint were served on the contacts for Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, L.L.C., Entergy Arkansas, Inc., Entergy Mississippi Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, Inc., and Entergy Texas, Inc. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 24, 2011.

Dated: August 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20263 Filed 8–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR11–20–000]

Tesoro Refining and Marketing Company, SFPP, L.P.; Notice of Complaint

Take notice that on August 2, 2011, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2, sections 1(4), 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act (ICA), 49 U.S.C. App. 1(4), 1(5), 8, 9, 13, 15, and 16 (1984); and section 1803 of the Energy Policy Act of 1992 (EPAct), Tesoro Refining and Marketing Company (Complainant) filed a complaint against SFPP, L.P. (SFPP or Respondent), challenging the justness and reasonableness of rates on SFPP's North Line.

Complainant alleges that from at least May 1, 2010 to the present, Respondent has charged unjust and unreasonable rates for transportation on its North Line from Richmond and Concord, CA to Reno, NV under SFPP FERC Tariff Nos. 179, 189, and 199.0.0. As a result, Complainant alleges that Respondent has significantly over-recovered its cost of service. Complainant requests that the Commission: (i) Convene an evidentiary hearing with full rights to discovery; (ii) determine that the rates established by Respondent under the tariffs specified above are unjust and unreasonable; (iii) prescribe new rates that are just and reasonable for future shipments of refined petroleum products on Respondent's North Line; (iv) order SFPP to pay refunds, reparations and damages, plus interest, to Complainant for shipments made by Complainant under the tariffs specified above; (v) award Complainant its costs and attorney's fees in prosecuting this Complaint; and (vi) grant Complainant such other, different or additional relief as the Commission may determine to be appropriate.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 1, 2011.

Dated: August 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20266 Filed 8–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ11–15–000]

Orlando Utilities Commission; Notice of Filing

Take notice that on July 29, 2011, Orlando Utilities Commission (OUC), pursuant to section 205 of the Federal Power Act (FPA) [1] and Part 35 of the Federal Energy Regulatory Commission's regulations under the FPA,[2] filed a Petition for Declaratory Order for revised non-jurisdictional tariff sheets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 19, 2011.

Dated: August 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20265 Filed 8–9–11; 8:45 am]

BILLING CODE 6717–01–P

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

[2] 18 CFR 35.28, *et seq.* (2011).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–1008; FRL–8883–4]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR)'' and identified by EPA ICR No. 0586.12 and OMB Control No. 2070–0054, is scheduled to expire on January 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before October 11, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–1008, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. *Attention:* Docket ID Number EPA–HQ–OPPT–2010–1008. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–1008. 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, 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.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Mike Mattheisen, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–3077; *fax number:* (202) 564–4755; *e-mail address: mattheisen.mike@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. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by this ICR are companies that manufacture, process or import chemical substances, mixtures or categories.

Title: TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR).

ICR numbers: EPA ICR No. 0586.12, OMB Control No. 2070–0054.

ICR status: This ICR is currently scheduled to expire on January 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes EPA to promulgate rules under which manufacturers, importers and processors of chemical substances and mixtures must maintain records and submit reports to EPA. EPA has promulgated the Preliminary Assessment Information Rule (PAIR) under TSCA section 8(a). EPA uses PAIR to collect information to identify, assess and manage human health and environmental risks from chemical substances, mixtures and categories. PAIR requires chemical manufacturers and importers to complete a standardized reporting form to help evaluate the potential for adverse human health and environmental effects caused by the manufacture or importation of identified chemical substances, mixtures or categories. Chemicals identified by EPA or any other federal agency, for which a justifiable information need for production, use or exposure-related data can be satisfied by the use of the PAIR are proper subjects for TSCA section 8(a) PAIR rulemaking. In most instances the information that EPA receives from a PAIR report is sufficient to satisfy the information need in question. This information collection addresses the reporting and recordkeeping requirements associated with TSCA section 8(a).

Responses to the collection of information are mandatory (see 40 CFR parts 712, 766, and 792). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average range 28.7 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 15.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 2.2.

Estimated total annual burden hours: 948 hours.

Estimated total annual costs: $59,158. This includes an estimated burden cost of $59,158 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are there changes in the estimates from the last approval?

There is a decrease of 620 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects a decrease in the assumed number of PAIR reports filed annually, and the average annual number of respondents, based on the past five fiscal years of PAIR reporting data. This change is an adjustment.

V. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: August 3, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–20202 Filed 8–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–1010; FRL–8883–5]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission'' and identified by EPA ICR No. 1139.09 and OMB Control No. 2070–0033, is scheduled to expire on January 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before October 11, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–1010, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. *Attention:* Docket ID Number EPA–HQ–OPPT–2010–1010. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–1010. 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* 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 *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, 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.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Mike Mattheisen, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–3077; *fax number:* (202) 564–4755; *e-mail address: mattheisen.mike@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. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by this ICR are companies that manufacture, process or import, use, distribute or dispose of one or more specified chemical substances.

Title: TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission.

ICR numbers: EPA ICR No. 1139.09, OMB Control No. 2070–0033.

ICR status: This ICR is currently scheduled to expire on January 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 4 of the Toxic Substances Control Act (TSCA) is designed to assure that chemicals that may pose serious risks to human health or the environment undergo testing by manufacturers or processors and that the results of such testing are made available to EPA. EPA uses the information collected under the authority of TSCA section 4 to assess risks associated with the manufacture, processing, distribution, use or disposal of a chemical, and to support any necessary regulatory action with respect to that chemical.

EPA must assure that appropriate tests are performed on a chemical if it decides: (1) That a chemical being considered under TSCA section 4(a) may pose an ''unreasonable risk'' or is produced in ''substantial'' quantities that may result in substantial or significant human exposure or substantial environmental release of the chemical; (2) that additional data are needed to determine or predict the impacts of the chemical's manufacture, processing, distribution, use or disposal; and (3) that testing is needed to develop such data. Rules and consent orders under TSCA section 4 require that one manufacturer or processor of a subject chemical perform the specified testing and report the results of that testing to EPA. TSCA section 4 also allows a manufacturer or processor of a subject chemical to apply for an exemption from the testing requirement if that testing will be or has been performed by another party. This information collection applies to reporting and recordkeeping activities associated with the information that EPA requires industry to provide in response to TSCA section 4 test rules, consent orders, test rule exemptions and other data submissions.

Responses to the collection of information are mandatory (see 40 CFR part 790). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 224 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 this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 174.7.

Estimated total annual burden hours: 39,233 hours.

Estimated total annual costs: $2,206,175. This includes an estimated burden cost of $2,206,175 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are there changes in the estimates from the last approval?

There is a decrease of 112,729 hours (from 151,962 hours to 39,233 hours) in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects a decrease in the

estimated number of items to be received from respondents, based on the Agency's recent experience. This change is an adjustment.

V. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: August 3, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–20201 Filed 9–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0558; FRL–8883–7]

Cancellation of Pesticides for Non-Payment of Year 2011 Registration Maintenance Fees; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of July 27, 2011, concerning cancellation of pesticides for non-payment of year 2011 registration maintenance fees. This document is being issued to correct Table 2 of the cancellation notice by removing five entries which were inadvertently included.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–6426; *e-mail address: jamula.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the July 27, 2011 notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–EPA–HQ–OPP–2011–0558. 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 Does This Correction Do?

This notice is being issued to correct Table 2 of the cancellation notice. This correction removes five entries which were inadvertently included as follows:

FR Doc. 2011–18706 published in the **Federal Register** of July 27, 2011 (76 FR 44907) (FRL–8879–8) is corrected as follows:

1. On page 44908, in Table 2, remove the complete entry for: ''003282–00092'' ''003282–00093,'' ''003282–00094,'' and ''003282–00095.''

2. On page 44910, in Table 2, remove the complete entry for ''069876–00001.''

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pest.

Dated: August 3, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2011–20285 Filed 8–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0656; FRL–8884–3]

Petition to Maximize Practical Utility of List 1 Chemicals Screened Through EPA's Endocrine Disruptor Screening Program; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking public comment on a June 21, 2011, petition from CropLife America (CLA), Consumer Specialty Products Association (CSPA), and the Responsible Industry for a Sound Environment (RISE) requesting the Agency develop and publish guidance explaining the criteria by which EPA will make its decisions on data received in response to the test orders issued under the Endocrine Disruptor Screening Program.

DATES: Comments must be received on or before October 11, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0656, 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–2011–0656. 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: Jane Smith, PRD, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–0048; *fax number:* (703) 308–8005; *e-mail address: smith.jane-scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides and other chemical substances; or if you are or may otherwise be involved in the testing of chemical substances for potential endocrine effects. Potentially affected entities, identified by the North American Industrial Classification System (NAICS) codes, may include, but are not limited to:

- Chemical manufacturers, importers and processors (NAICS code 325), *e.g.,* persons who manufacture, import or process chemical substances.
- Pesticide, fertilizer, and other agricultural chemical manufacturing (NAICS code 3253), *e.g.,* persons who manufacture, import or process pesticide, fertilizer and agricultural chemicals.
- Scientific research and development services (NAICS code 5417), *e.g.,* persons who conduct testing of chemical substances for endocrine effects.

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. To determine whether you or your business may be affected by this action, you should carefully examine section 408(p) of the FFDCA. If you have any questions regarding the applicability **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. Background

A. What action is the agency taking?

In October 2009, the Agency initiated the Endocrine Disruptor Screening Program (EDSP) Tier 1 screening for the first list of 67 chemicals by issuing orders between October 29, 2009, and February 26, 2010, pursuant to the authority provided to EPA under section 408(p)(5) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The orders require the testing of chemicals through eleven (11) Tier 1 screening assays. The purpose of the eleven (11) Tier 1 screening assays is to determine the potential for a chemical to interact with estrogen, androgen and thyroid hormone systems. Based on the data from the tier 1 assays, should the determination be made that the chemical is shown to interact, additional tier 2 testing may be required.

EPA is seeking public comment on a June 21, 2011, petition from CropLife America, Consumer Specialty Products Association and the Responsible Industry for a Sound Environment requesting that the Agency:

(1) Publish guidance explaining the criteria by which EPA will make its decisions on data received in response to the test orders issued under the Endocrine Disruptor Screening Program;

(2) Provide sufficient time for list 1 chemical test order recipients to prepare and submit their Tier 1 screening results in compliance with the guidance once developed; and

(3) Fully analyze the Tier 1 screening data received in response to the list 1 test orders and revise the guidance to be developed to reflect what is learned by

the analysis in order to ensure scientifically sound determinations and to protect the public health and the environment.

B. What is the agency's authority for taking this action?

This action is taken under the authority of FFDCA section 408(p), 21 U.S.C. 346a(d)(3).

List of Subjects

Environmental protection, Endocrine Disruptor Screening Program, EDSP, EDSP Orders, List 1 Chemicals, Tier 1 Guidance, weight of evidence.

Dated: August 3, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–20287 Filed 8–9–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and Request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens and as required by the Paperwork Reduction Act of 1995, Public Law 104–13, the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). 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 burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Persons wishing to comment on this information collection should submit comments October 11, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicolas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov*, and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0770.

Title: Sections 1.774, 61.49, 61.55, 61.58, 69.4, 69.707, 69.713 and 69.729, Price Cap Performance.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 21 respondents; 21 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. sections 151, 154(i), 154(j), 201–205, 303(r), and 403.

Total Annual Burden: 210 hours.

Annual Cost Burden: $17,115.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No information of a confidential nature is requested. However, respondents may request materials or information submitted to the Commission to be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the reporting requirements). The Commission will submit this information collection after this 60-day comment period. The Commission is reporting an adjustment increase in annual costs. The annual filing fee increase from $775 to $815 for a total estimate of $17,115 in annual costs.

The Commission permits price cap LECs to introduce new services on a streamlined basis, without prior approval. In August 1999, the Commission modified the rules to eliminate the public interest showing required by 47 CFR 69.4(g) and to eliminate the new services test requirement (except in the case of loop-based new services) required under 47 CFR 69.49(f) and (g). These modifications eliminate delays that existed for the introduction of new services as well as encourage efficient investment and innovation.

Section 61.49 also requires supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation. The other rule sections that were adopted in the *Fifth Report and Order, FCC 99–206,* that are subject to OMB review and approval are the following:

Section 1.774, *Pricing Flexibility,* describes what a petitioner for pricing flexibility must provide for specific services pursuant to part 69, Subpart H, with respect to a metropolitan statistical area (MSA), as defined in section 22.909(a), or the non-MSA parts of a study area, must show that the price cap LEC has met the relevant thresholds set forth in part 69, subpart H.

Section 61.55, Contract-based tariffs shall include the terms of contract, including any renewal options; a brief description of each of the services provided under the contract; minimum volume commitments for each service; the contract price for each service or services at the volume levels committed to by the customers; a general description of any volume discounts built into the contract rate structure; and a general description of other classifications, practices, and regulations affecting the contract rate.

Section 61.58, Notice requirements establish various time requirements for filing tariffs or amendments.

Section 69.707, for MSAs a price cap LEC filing a petition for pricing flexibility in a MSA shall include data sufficient to support its petition, as set forth in Subpart H, Pricing Flexibility, disaggregated by MSA. A price cap LEC may request pricing flexibility for two or more MSAs in a single petition, provided that it submits supporting data disaggregated by MSA.

Section 69.713(b)(1), *Phase 1 Triggers,* to obtain Phase 1 pricing flexibility, as specified in 47 CFR 69.727(a), for the services identified in paragraph (a) of this section, a price cap LEC must provide convincing evidence that, in the relevant areas as described in 47 CFR 69.707, its unaffiliated competitors, in aggregate, offer service to at least 15

percent of the price cap LEC's customer locations. For purposed of the showing required by paragraph (b)(1) of this section, the price cap LEC may not rely on service the competitors provide solely by reselling the price cap LEC's services, or provide through unbundled network elements as defined by 47 CFR 51.5, except the price cap LEC may rely on service the competitors provide through the use of the price cap LEC's unbundled loops.

Section 69.727 requires except for new services subject to paragraph (b) of this rule section, a price cap LEC may obtain pricing flexibility for a new service that has not been incorporated into a price cap basket by demonstrating in its pricing flexibility petition that the new service would be properly incorporated into one of the price cap baskets and service bands for which the price cap LEC seeks pricing flexibility.

The information collected will be submitted to the Commission by an incumbent LEC for use in determining whether the rates proposed by an incumbent LEC offering a new loop-based switched access service are reasonable.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–20251 Filed 8–9–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and Request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens and as required by the Paperwork Reduction Act of 1995, Public Law 104–13, the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). 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 burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Persons wishing to comment on this information collection should submit comments October 11, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicolas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov,* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0204.

Title: Section 90.20(a)(2)(v) and 90.20(a)(2)(xi), Special Eligibility Showings for Authorizations in the Public Safety Pool.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents: 220 respondents; 220 responses.

Estimated Time per Response: .7045454 hours.

Frequency of Response: On occasion.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. sections 154(i), 161, 303(g), 303(r) and 332(c)(7).

Total Annual Burden: 155 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the reporting requirements). The Commission will submit this information collection after this 60 day comment period. The Commission has adjusted the total burden hours from 151 to 155 because the hours per response for section 90.20(a)(2)(v) is now estimated at 15 minutes per response. Previously the estimate was three minutes.

Section 90.20(a)(2)(v) provides that persons claiming eligibility in the Special Emergency Radio Service on the basis of being physically handicapped must present a physician's statement indicating that they are handicapped. Submission of this information is necessary to ensure that frequencies reserved for licensing to handicapped individuals are not licensed to non-handicapped persons.

Section 90.20(a)(2)(xi) is necessary to determine if communications common carrier applicants requesting frequencies for use as standby facilities for communications related to safety of life and public property is necessary for such purposes.

Specifically, Section 90.20(a)(2)(xi) states: ''A communications common carrier operating communications circuits that normally carry essential communication of such nature that their disruption would endanger life or public property is eligible to hold authorizations for standby radio facilities for the transmission of messages only during periods when the normal circuits are inoperative due to circumstances beyond the control of the user. During such periods the radio facilities may be used to transmit any communication which would be carried by the regular circuit. Initial applications for authorization to operate a standby radio facility must include a statement describing radio communications facilities desired, the proposed method of operation, a description of the messages normally being carried, and an explanation of how their disruption will endanger life or public property.''

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–20314 Filed 8–9–11; 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: August 1, 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
10383	BankMeridian, N.A.	Columbia	SC	7/29/2011
10384	Integra Bank National Association	Evansville	IN	7/29/2011
10385	Virginia Business Bank	Richmond	VA	7/29/2011

[FR Doc. 2011–20227 Filed 8–9–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–23]

Consideration of Extenuating Circumstances for Implementation of Modification of Annual National Registry Fee

AGENCY: Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council.

ACTION: The ASC is providing notice to all States that it will consider requests for an extension of the effective date of the modified National Registry fee based on extenuating circumstances.

SUMMARY: Under authority in the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), the ASC approved a modification of the annual National Registry fee to $40 from the current $25 amount at its meeting on October 13, 2010. The ASC raised the National Registry Fee to support its supervisory activities, including additional authority under the Dodd-Frank Act (see Bulletin 10–1, *Modification of Annual National Registry Fee,* 75 FR 65629, October 26, 2010).

In the event a State encounters difficulty with implementing the modified National Registry fee by January 1, 2012, the State must notify the ASC no later than October 31, 2011. The ASC will consider a State's request for an extension of the effective date of the modified National Registry fee when extenuating circumstances prevent compliance and the State has acted in good faith to implement any actions necessary for achieving compliance. Extenuating circumstances include, but are not limited to, the following:

- The State was not able to enact necessary legislation or promulgate a rulemaking to implement the modified National Registry fee by January 1, 2012.
- The State could not exercise emergency or temporary authority, if any, to pass legislation or promulgate a rulemaking to implement the modified National Registry fee by January 1, 2012.
- The funds remitted by the State to the ASC to pay the modified National Registry fee would come from a source other than the credentialed appraiser.

States must ensure that any request for an extension contains sufficient detail regarding the State's efforts to achieve compliance to date, and the extenuating circumstances that will prevent compliance.

DATES: *Effective Date:* Immediately.

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595–7575, or Alice M. Ritter, General Counsel, at (202) 595–7577, via Internet e-mail at *Jim@ASC.gov* and *Alice@ASC.gov,* respectively, or by U.S. Mail at Appraisal Subcommittee, 1401 H Street, NW., Suite 760, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The ASC issued the following Supplement to Bulletin 10–1 *Modification of National Registry Fee.* This Supplement provides States an opportunity to request an extension of the effective date of the modification in the National Registry Fee based on extenuating circumstances.

August 4, 2011.

Deborah S. Merkle,

Chairman.

[FR Doc. 2011–20300 Filed 8–9–11; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2011–N–08]

Termination of Federal Home Loan Bank Resolution Funding Corporation Obligation

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) has determined that, as of July 15, 2011, the Federal Home Loan Banks (Banks) have satisfied their statutory obligation to contribute a percentage of their annual net earnings toward the interest payments due on bonds issued by the Resolution Funding Corporation (RefCorp).

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Associate Director, Division of Federal Home Loan Bank Regulation, 202–408–2845, *Joseph.McKenzie.@fhfa.gov,* Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006–4001, or Neil R. Crowley, Deputy General Counsel, 202–343–1316, *Neil.Crowley@fhfa.gov,* Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20052. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

In 1989, Congress established RefCorp as a vehicle to provide funding for the Resolution Trust Corporation to finance its efforts to resolve the savings and loan crisis. 12 U.S.C. 1441b(a), (b). RefCorp issued approximately $30 billion of long-term bonds, the last of which will mature in April 2030. The interest due on the RefCorp bonds is paid from several sources, including contributions from the Banks.

As initially enacted, the law required the Banks to contribute $300 million annually toward the RefCorp interest payments. Public Law 101–73, Title V, § 511(a), 103 Stat. 394, (August 9, 1989). In 1999, Congress amended the law to require each Bank to pay 20 percent of its net earnings annually toward the RefCorp interest payments. Public Law 106–102, Title VI, § 607(a), 113 Stat. 1455, (November 12, 1999), codified at 12 U.S.C. 1441b(f)(2)(C)(i). The Banks' payment obligation was to continue until the value of all payments made by the Banks to RefCorp equaled the value of a benchmark annuity of $300 million per year that commenced on the date that the RefCorp bonds had been issued and ended on the last maturity date for the RefCorp bonds, which is April 15, 2030.

The law further directed the Federal Housing Finance Board (Finance Board) to determine annually the extent to which the value of the Banks' contributions for that year exceeded or fell short of the value of the benchmark annuity. In determining those values, the law required the Finance Board to use present-value factors established in consultation with the Secretary of the Treasury and further required that the Finance Board terminate the Banks' payment obligation once the value of their payments equaled the value of the benchmark annuity. Regulations of the Finance Board, which remain in effect, address the manner in which the calculations of the Banks' RefCorp obligation, including its termination, are to be conducted. 12 CFR part 997. In 2008, Congress established FHFA, which, among other things, succeeded to all of the above responsibilities of the Finance Board with respect to the determinations that are to be made regarding the RefCorp payments, and was required to submit semiannual reports to Congress that estimated the projected date on which the Banks would satisfy their obligation to contribute to the RefCorp debt service payments. Public Law 110–289, Title I, § 1101, Title II, §§ 1204, 1213, Title III, § 1312, 122 Stat. 2661, 2785–86, 2791, 2798 (July 30, 2008).

II. Termination of Payment Obligation

The Banks make their RefCorp contributions on a quarterly basis, and FHFA determines how the value of those payments compares to the value of the benchmark annuity on a quarterly basis as well. To the extent that any quarterly RefCorp payments exceed $75 million (one quarter of the $300 million benchmark annuity) FHFA applies the excess portion to simulate the purchase of zero-coupon Treasury bonds, which ''defeases'' the most-distant of the Banks' remaining RefCorp payments and effectively shortens the duration of their repayment obligation.

Since 1999, all but two of the Banks' quarterly RefCorp contributions have exceeded the $75 million benchmark, which has caused the termination date to move incrementally closer. In its most recent report to Congress on the RefCorp obligation, FHFA projected that if the Banks' quarterly earnings subsequent to December 31, 2010, were to equal their average quarterly income over the preceding four quarters, then their final RefCorp contribution would be made with the payment due on July 15, 2011.[1]

After consulting with the Department of the Treasury and conducting the calculations in accordance with 12 CFR Part 997, FHFA determined that the remaining amount owed by the Banks for the RefCorp debt service was $75,148,203.13, which amount the Banks paid on July 15, 2011.

Accordingly, the Director has determined that the payment made on July 15, 2011, caused the value of all RefCorp payments made by the Banks to that date to equal the value of the benchmark annuity, which terminates the obligation of the Banks to contribute toward the debt service for the RefCorp bonds.

Authority: 12 U.S.C. 1441b(f)(2)(C)(iii).

Dated: August 5th, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–20311 Filed 8–9–11; 8:45 am]

BILLING CODE 8070–01–P

[1] See Letters from Edward J. DeMarco, Acting Director, to Senator Tim Johnson, Chairman, and Senator Richard C. Shelby, Ranking Member, of the Committee on Banking, Housing, and Urban Affairs, and to Representative Spencer Bachus, Chairman, and Representative Barney Frank, Ranking Member, of the Committee on Financial Services, all dated February 4, 2011.

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)- 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011383–045.

Title: Venezuelan Discussion Agreement.

Parties: Hamburg-Süd; King Ocean Service de Venezuela; Seaboard Marine Ltd., and SeaFreight Line, Ltd.

Filing Party: Wayne R. Rohde, *Esq.;* Cozen O'Conner; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would replace King Ocean Service de Venezuela with King Ocean Services Limited, Inc. as a party to the agreement.

Agreement No.: 201162–008.

Title: NYSA–ILA Assessment Agreement.

Parties: International Longshoremen's Association and New York Shipping Association.

Filing Parties: Donato Caruso, *Esq.;* The Lambos Firm; 303 South Broadway, Suite 410; Tarrytown, NY 10591 and Andre Mazzola, *Esq.;* Marrinan & Mazzola Mardon, P.C.; 26 Broadway, 17th Floor; New York, NY 10004.

Synopsis: The amendment reduces the assessment rate on certain containers in the Bermuda trade.

By Order of the Federal Maritime Commission.

Dated: August 5, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–20329 Filed 8–9–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes

and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Wintrust Financial Corporation,* Lake Forest, Illinois; to merge with Elgin State Bancorp, Inc., and thereby indirectly acquire Elgin State Bank, both in Elgin, Illinois.

Board of Governors of the Federal Reserve System, August 5, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–20261 Filed 8–9–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Franchise Rule Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through December 31, 2014, the current PRA clearance for information collection requirements contained in its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising (''Franchise Rule''). That clearance expires on December 31, 2011.

DATES: Comments must be submitted on or before October 11, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/franchiserulePRA* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the Franchise Rule should be addressed to Craig Tregillus, Staff Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2970.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Franchise Rule, 16 CFR part 436 (OMB Control Number 3084–0107).

The FTC invites comments on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

The Franchise Rule ensures that consumers who are considering a franchise investment have access to the material information they need to make an informed investment decision provided in a format that facilitates comparisons of different franchise offerings. The Rule requires that franchisors disclose this information to consumers and maintain records to facilitate enforcement of the Rule. Amendments to the Rule promulgated on March 30, 2007, which took effect after a one-year phase-in on July 1, 2008, merged the Rule's disclosure requirements with the disclosure format accepted by 15 states that have franchise registration or disclosure laws.[1] The amended Rule has significantly minimized any compliance burden beyond what is already required by state law.

The amended Rule requires franchisors to furnish to prospective purchasers with a Franchise Disclosure Document (''FDD'') that provides information relating to the franchisor, its business, the nature of the proposed franchise, and any representations by the franchisor about financial performance regarding actual or potential sales, income, or profits made to a prospective franchise purchaser. The franchisor must preserve materially different copies of its disclosures and franchise agreements, as well as information that forms a reasonable basis for any financial performance representation it elects to make. These requirements are subject to the PRA, and for which the Commission seeks to extend existing clearance.

Estimated annual hours burden: 16,750 hours.

Based on a review of trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 2,500 sellers of franchises covered by the Rule, with perhaps about 10% of that total reflecting an equal amount of new and departing business entrants.[2] Commission staffs burden hour estimate reflects the incremental tasks that the Rule may impose beyond the

[1] 72 FR 15544 *et seq.*

[2] This number, which was also used in the 2008 clearance request, appears to be consistent with the number of business format franchise offerings registered in compliance with state franchise laws, and listed in franchise directories.

information and recordkeeping requirements imposed by state law and/or followed by franchisors who have been using the FDD disclosure format nationwide. This estimate likely overstates the actual incremental burden because some franchisors, for various reasons, may not be covered by the Rule (*e.g.*, they sell only franchises that qualify for the Rule's large franchise investment exemption of at least $1 million).

Staff estimates that the average annual disclosure burden to update existing disclosure documents will be 3 hours each for the 2,250 established franchisors, or 6,750 hours cumulatively for them, and 30 hours apiece each year for the 250 or so new entrant franchisors to prepare their initial disclosure documents, or 7,500 hours, cumulatively, for the latter group. These estimates parallel staff's 2008 estimates for the amended Rule.[3] No public comments were received on those prior estimates; accordingly, the FTC retains them for the instant analysis subject to further opportunity for public comment.

As recognized in the 2008 analysis, covered franchisors also may need to maintain additional documentation for the sale of franchises in non-registration states, which could take up to an additional hour of recordkeeping per year. Assuming, as before, an hour of incremental recordkeeping per covered franchisor, this yields an additional cumulative total of 2,500 hours for all covered franchisors.

Under the Rule, a franchisor is required to retain copies of receipts for disclosure documents, as well as materially different versions of its disclosure documents. Such recordkeeping requirements, however, are consistent with, or less burdensome than, those imposed by the states. Accordingly, staff believes that incremental recordkeeping burden, if any, would be de minimis.

Based on the above assumptions and estimates, average yearly burden for new and established franchisors during a prospective 3-year clearance would be 16,750 hours ((30 hours of annual disclosure burden × 250 new franchisors) + (3 hours of average annual disclosure burden × 2,250 established franchisors) + (1 hour of annual recordkeeping burden × 2,500 franchisors)).

Estimated annual labor cost burden: $3,597,500.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are estimated averages.

Commission staff anticipates that an attorney will prepare the disclosure document. Applying the above assumptions to an estimated hourly attorney rate of $250, yields the following yearly totals: $7,500 per new franchisor (or, $1,875,000, cumulatively, for new franchisors) and $750 per established franchisor (or, $1,687,500, cumulatively, for established franchisors).

Combined, then, cumulative labor costs for all covered franchisors to prepare the disclosure document is $3,562,500.

The FTC additionally anticipates that recordkeeping under the Rule will be performed by clerical staff at approximately $14 per hour.[4] Thus, 2,500 hours of recordkeeping burden per year for all covered franchisors will amount to a total annual labor cost of $35,000.

Cumulatively, then, total estimated labor cost under the Rule is $3,597,500 (($7,500 attorney costs × 250 new franchisors = $1,875,000) + ($750 attorney costs × 2,250 established franchisors = $1,687,500) + ($14 clerical costs × 2,500 franchisors = $35,000)).

Estimated non-labor costs: $8,000,000.

In developing cost estimates initially for this Rule, FTC staff consulted with practitioners who prepare disclosure documents for a cross-section of franchise systems. The FTC believes that its cost estimates remain representative of the costs incurred by franchise systems generally. In addition, many franchisors establish and maintain Web sites for ordinary business purposes, including advertising their goods or services and to facilitate communication with the public. Accordingly, any costs franchisors would incur specifically as a result of electronic disclosure under the Rule appear to be minimal.

As set forth in the 2008 Notices, FTC staff estimates that the non-labor burden incurred by franchisors under the Franchise Rule differ based on the length of the disclosure document and the number of them produced. Staff estimates that 2,000 franchisors (80% of total franchisors covered by the Rule) will print and mail 100 disclosure documents at $35 each. Thus, these franchisors would each incur an estimated $3,500 in printing and mailing costs. Staff estimates that the remaining 20% of covered franchisors (500) will transmit 50% of their 100 disclosure documents electronically, at $5 per electronic disclosure. Thus, these franchisors will each incur $2,000 in distribution costs (($250 for electronic disclosure [$5 for electronic disclosure × 50 disclosure documents]) + ($1,750 for printing and mailing [$35 for printing and mailing × 50 disclosure documents])).

Accordingly, the cumulative annual non-labor costs for the Rule is approximately $8,000,000 (($3,500 printing and mailing costs × 2,000 franchisors = $7,000,000) + ($250 electronic distribution costs + $1,750 printing and mailing costs) × 500 franchisors = $1,000,000)).

Request for Comment

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before October 11, 2011. Write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the

[3] See 73 FR 40580 (July 15, 2008); 73 FR 60696 (Oct. 14, 2008).

[4] Based on mean and median hourly rates for file clerks found in the ''National Compensation Survey: Occupational Earnings in the United States 2010,'' U.S. Department of Labor, released May 2011, Bulletin 2753, Table 3 (''Full-time civilian workers,'' mean and median hourly wages), available at *http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf.*

procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[5] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/franchiserulePRA* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 11, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.fte.gov/ftc/privacy.htm.*

Willard K. Tom,

General Counsel.

[FR Doc. 2011–20111 Filed 8–9–11; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

[July 1, 2011 thru July 29, 2011]

07/01/2011		
20110962	G	Terex Corporation; Demag Cranes AG; Terex Corporation.
20111032	G	Wicks Communications & Media Partners III, UP.; *Scheduling.com.* Inc.; Wicks Communications & Media Partners III, L.P.
20111033	G	Vector Capital IV International, L.P.; Gerber Scientific, Inc., Vector Capital IV International, L.P.
20111044	G	Elon Musk; SolarCity Corporation; Elon Musk.
07/06/2011		
20111047	G	Golden Gate Capital Opportunity Fund, L.P.; EPMC Holdco, LLC; Golden Gate Capital Opportunity Fund, L.P.
07/08/2011		
20111045	G	General Dynamics Corporation; Liberty Partners Holdings 38, L.L.C.; General Dynamics Corporation.
20111048	G	Carlyle Europe Partners III, L.P.; Gores Capital Partners II, L.P.; Carlyle Europe Partners III, L.P.
07/11/2011		
20111052	G	Genesis Energy, L.P.; Dennis A. Pasentine; Genesis Energy, L.P.
20111053	G	American Industrial Partners Capital Fund IV, L.P.; Weyerhaeuser Company; American Industrial Partners Capital Fund IV, L.P.
20111055	G	Forum Energy Technologies, Inc.; Carl A. Davis; Forum Energy Technologies, Inc.
20111058	G	Christopher Cline; Canadian National Railway Company; Christopher Cline.
20111059	G	OCP Trust; Accelerated Holdings Corporation; OCP Trust.
20111060	G	Cengage Learning Holdings I, Limited Partnership; National Geographic Society; Cengage Learning Holdings I, Limited Partnership.
20111066	G	PricewaterhouseCoopers LLP; PRTM Management Consultants, Inc.; PricewaterhouseCoopers LLP.
20111074	G	Riverside Capital Appreciation Fund V, L.P.; MT Industries, Inc.; Riverside Capital Appreciation Fund V, L.P.
20111076	G	Aetna Inc.; Genworth Financial, Inc.; Aetna Inc.

[5] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

EARLY TERMINATIONS GRANTED—Continued

[July 1, 2011 thru July 29, 2011]

20111078	G	Allied World Assurance Company Holdings, AG; Transatlantic Holdings, Inc.; Allied World Assurance Company Holdings, AG.
07/12/2011		
20111050	G	Alimentation Couche-Tard Inc.; Royal Dutch Shell plc; Alimentation Couche-Tard, Inc.
20111070	G	Spectra Energy Corp.; ConocoPhillips; Spectra Energy Corp.
20111079	G	Cargill, Incorporated; Teys Investments Pty Limited; Cargill, Incorporated.
20111080	G	Cargill, Incorporated; Consolidated Press International Holdings Limited; Cargill, Incorporated.
07/13/2011		
20110568	G	Graeme R. Hart; Honeywell International Inc.; Graeme R. Hart.
20111039	G	Iowa Health System; Methodist Health Services Corporation; Iowa Health System.
20111072	G	eBay, Inc.; Roee Rubin; eBay Inc.
07/15/2011		
20111028	G	TPG Vienna Holdings, L.P.; StoneRiver Group, L.P.; TPG Vienna Holdings, L.P.
20111030	G	V.F. Corporation; The Timberland Company; V.F. Corporation.
20111061	G	Alimentation Couche-Tard, Inc.; Exxon Mobil Corporation; Alimentation Couche-Tard, Inc.
20111068	G	Energy Capital Partners II–A, LP; Public Service Enterprise Group Incorporated; Energy Capital Partners II–A, LP.
20111081	G	Jahm Najafi; Borders Group, Inc.; Jahm Najafi
20111083	G	Li & Fung Limited; Felix A. Porcaro, Jr.; Li & Fung Limited
20111086	G	Metropolitan Health Networks, Inc.; Continucare Corporation; Metropolitan Health Networks, Inc.
20111087	G	Todd H. Epsten; James R. & Kristen A. Gustafson; Todd H. Epsten.
20111089	G	Universal Stainless & Alloy Products, Inc.; 1386171 Ontario, Inc.; Universal Stainless & Alloy Products, Inc.
20111092	G	Li & Fung Limited; Fishman & Tobin, Inc.; Li & Fung Limited.
20111093	G	Windjammer Senior Equity Fund III, L.P.; Joseph W. Chambers, Jr.; Windjammer Senior Equity Fund III, L.P.
20111097	G	Sunoco Logistics Partners L.P.; Texon Holding II L.P.; Sunoco Logistics Partners L.P
20111101	G	Fiat S.p.A.; Chrysler Group LLC; Fiat S.p.A.
07/18/2011		
20110985	G	EMC Corporation; CPTN Holdings LLC; EMC Corporation.
20111098	G	Vanguard Health Systems, Inc.; Valley Baptist Health System; Vanguard Health Systems, Inc.
07/19/2011		
20111096	G	Industrial Growth Partners III, L.P.; Aurora Resurgence Fund (C) L.P.; Industrial Growth Partners III, L.P.
07/20/2011		
20111015	G	Polycom, Inc.; Hewlett-Packard Company; Polycom, Inc.
20111094	G	BHI Holding Corp.; Falfurrias Capital Partners, LP; BHI Holding Corp.
07/21/2011		
20111034	G	Cardtronics Inc.; Alpine Investors III, L.P.; Cardtronics Inc.
07/22/2011		
20111095	G	Blackstone Capital Partners VI Fund L.P.; Goldman Sachs Vintage Fund IV Offshore, L.P.; Blackstone Capital Partners VI Fund L.P.
20111102	G	Aurora Equity Partners IV, L.P.; Wingate Partners III, L.P.; Aurora Equity Partners IV, L.P.
20111105	G	GP Capital Partners III, L.P.; Fogo de Chao Churrascaria (Holdings) LLC; GP Capital Partners III, L.P.
20111110	G	CA, Inc.; Interactive TKO, Inc.; CA, Inc.
20111111	G	Porsche Automobil Holding SE; MAN SE; Porsche Automobil Holding SE.
20111114	G	Sound Credit Union; Watermark Credit Union; Sound Credit Union.
20111120	G	Andre Delachaux; Sodelho S.A.S.; Andre Delachaux
20111126	G	Sunoco Logistics Partners L.P.; ConocoPhillips; Sunoco Logistics Partners L.P.
20111128	G	Sterling Investment Partners II, L.P.; Thoma Cressey Fund VIII, L.P.; Sterling Investment Partners II, L.P.
20111132	G	Astellas Pharma, Inc.; Vical Incorporated; Astellas Phanna, Inc.
20111133	G	BHP Billiton Limited; Petrohawk Energy Corporation; BHP Billiton Limited.
07/25/2011		
20110910	G	Perrigo Company; Bruce Paddock; Perrigo Company.
20111085	G	Welsh, Carson, Anderson & Stowe IX, L.P.; Community Health Systems, Inc.; Welsh, Carson, Anderson & Stowe IX, L.P.
20111100	G	Ocwen Financial Corporation; The Goldman Sachs Group, Inc.; Ocwen Financial Corporation.
20111115	G	Charles W. Ergen; TerreStar Corporation; Charles W. Ergen.

EARLY TERMINATIONS GRANTED—Continued

[July 1, 2011 thru July 29, 2011]

20111122	G	Accenture PLC; Duck Creek Technologies, Inc.; Accenture PLC.
07/27/2011		
20111057	G	Catholic Health Initiatives; Nebraska Heart Hospital, LLC; Catholic Health Initiatives.
20111130	G	Electronic Arts, Inc.; PopCap Games, Inc.; Electronic Arts, Inc.
07/29/2011		
20110970	G	Air Methods Corporation; Wind Point Partners V, L.P.; Air Methods Corporation.
20111069	G	Oracle Corporation; CPTN Holdings LLC; Oracle Corporation.
20111112	G	Telefonaktiebolaget LM Ericsson; Telcordia Holdings, Inc.; Telefonaktiebolaget LM Ericsson.
20111125	G	NCR Corporation; Radiant Systems. Inc.; NCR Corporation.
20111138	G	AIF VII Euro Holdings, L.P.: Alexey Mordashov; AIF VII Euro Holdings, L.P.
20111141	G	VCA Antech, Inc.; Vestar Capital Partners V, L.P.; VCA Antech, Inc.
20111142	G	Leucadia National Corporation; Mueller Industries, Inc.; Leucadia National Corporation.
20111144	G	John M. Pasquesi; Arch Capital Group Ltd.; John M. Pasquesi.
20111148	G	JPMorgan Chase & Co.; APAC Customer Services, Inc.; JPMorgan Chase & Co.
20111149	G	Trimble Navigation Limited; Wells Fargo & Company; Trimble Navigation Limited.
20111151	G	Key Energy Services, Inc.; Summit Oilfield Services, L.L.C.; Key Energy Services, Inc.
20111152	G	Key Energy Services, Inc.; Edge Oilfield Services Holding, L.L.C.; Key Energy Services, Inc.
20111153	G	eBay, Inc.; Zong SA; eBay, Inc.
20111156	G	Accel-KKR Capital Partners III, LLP; Thomas E. Kolassa; Accel-KKR Capital Partners III, LLP.
20111157	G	Friedman Fleischer & Lowe Capital Partners III, L.P.; JLL Partners Fund IV, L.P.; Friedman Fleischer & Lowe Capital Partners III, LP.
20111158	G	Riverstone/Carlyle Renewable & Alternative Energy Fund II–C; MEG Holdings, LLC; Riverstone/Carlyle Renewable & Alternative Energy Fund II–C.
20111165	G	Anatoly Sedykh; Tubular Holdings, LLC; Anatoly Sedykh.

FOR FURTHER INFORMATION CONTACT: Renee Chapman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–20023 Filed 8–9–11; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0064; Docket 2011–0079; Sequence 18]

Federal Acquisition Regulation; Information Collection; Organization and Direction of Work

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat 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 concerning organization and direction of work.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 11, 2011.

ADDRESSES: Submit comments identified by Information Collection 9000–0064, Organization and Direction of Work, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0064, Organization and Direction of Work'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0064, Organization and Direction of Work''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0064, Organization and Direction of Work'', 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 9000–0064, Organization and Direction of Work.

Instructions: Please submit comments only and cite Information Collection 9000–0064, Organization and Direction of Work, 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.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia Davis, Procurement Analyst, Federal Acquisition Policy Division, GSA, telephone (202) 219–0202, or via e-mail at *Cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government awards a cost-reimbursement construction contract,

the contractor must submit to the contracting officer and keep current a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under the contract, and their respective duties. The chart is used in administration of the contract and as an aid in determining cost. The chart is used by contract administration personnel to assure the work is being properly accomplished at reasonable prices.

B. Annual Reporting Burden

Respondents: 50.
Responses per Respondent: 1.
Annual Responses: 50.
Hours per Response: .75.
Total Burden Hours: 38.
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. 9000–0064, Organization and Direction of Work, in all correspondence.

Rodney Lantier,
Deputy Director, Acquisition Policy.

[FR Doc. 2011–20328 Filed 8–9–11; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice CIB–2011–2; Docket–2011–0004; Sequence 4]

Privacy Act of 1974; Notice of New System of Records

AGENCY: General Services Administration.

ACTION: New notice.

SUMMARY: GSA proposes to establish a new system of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

DATES: Effective September 9, 2011.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail *gsa.privacyact@gsa.gov.*

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1275 First Street, NE., Washington, DC 20417.

SUPPLEMENTARY INFORMATION: GSA proposes to establish a new system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The new system will allow GSA Users to utilize two factor authentication to access Google Apps for Government implementation used by the GSA.

Dated: July 26, 2011.

Cheryl M. Paige,
Director, Office of Information Management.

GSA/CIO–2

SYSTEM NAME:

Enterprise Server Services (ESS)

SYSTEM LOCATION:

Enterprise Server Services is a singular component system managed by the Systems Solutions Division, a division of Office of the Chief Information Officer. The ESS system is housed in secure datacenters hosted by GSA in each of its regional office buildings and in various additional secure datacenters throughout the National Capital Region, including Crystal City, Willow Wood, GSA Central Office Building, and GSA's temporary facility at Constitution Square. In addition, some employees and contractors may download and store information from this system. Those copies are located within the employee and contractor's office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Only one category of individual is covered by this system, collectively referred to as ''GSA Users'', which are individuals who require routine access to agency information technology systems, including federal employees, contractors, child care workers and other temporary workers with similar access requirements. The system does apply to or contain occasional visitors or short-term guests.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information needed to utilize two factor authentication to access Google Apps for Government. Records may include, but not necessarily be limited to:

- Employee/contractor/other worker's full name
- Organization/office of assignment
- Company/agency name
- Work Address
- GSA Assigned work telephone number
- Personal home or mobile phone
- Personal e-mail addresses

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 40 U.S.C. 121, 40 U.S.C. 11315, 44 U.S.C. 3506, E.O. 9397, as amended, and Homeland Security Presidential Directive 12 (HSPD–12).

PURPOSES:

To allow GSA to utilize two factor authentication to access Google Apps for Government implementation used by the GSA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All GSA Users utilize two factor authentication to access Google Apps for Government.

a. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office, made at the written request of the constituent about whom the record is maintained.

b. To the National Archives and Records Administration (NARA) or to the General Services Administration for records management purposes.

c. To agency contractors, grantees, consultants or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who needs to have access to records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Federal Information Security Management Act (Pub. L. 107–296), and associated OMB policies, standards and guidance from the National Institute of Standards of Technology, and the General Services Administration.

d. To a Federal agency, State, local, foreign, or tribal or other public authority, on request, in connection with the hiring or retention of an employee, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision.

e. To the Office of Management and Budget (OMB) when necessary to the review of private relief legislation pursuant to OMB circular No. A–19.

f. To designated agency personnel for controlled access to specific records for the purpose of performing authorized audit or authorized oversight and administrative credentials based on access and authorization rules specific audit and administrative functions.

g. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO), or other Federal agencies when the information is required for program evaluation purposes.

h. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of

information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

i. In any criminal, civil or administrative legal proceeding, where pertinent, to which GSA, a GSA employee, or the United States or other entity of the United States Government is a party before a court or administrative body.

j. To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and/or an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYTEM:

STORAGE:

Computer records are stored on a secure server and accessed over the Web via encryption software. Paper records, when created, are kept in file folders and cabinets in secure rooms. When individuals download information, it is kept on password secured computer and it is their responsibility to protect the data, including compliance with HCO 2180.1, GSA Rules of Behavior for Handling Personally Identifiable Information (PII).

RETRIEVABILITY:

Records are retrievable by a combination of first name and last name. Group records are retrieved by organizational code.

SAFEGUARDS:

Access is limited to authorized individuals with passwords or keys. Computer records are protected by a password system that is compliant with National Institute of Standards and Technology standards. Paper records are stored in locked metal containers or in secured rooms when not in use. Information is released to authorized officials based on their need to know.

RETENTION AND DISPOSAL:

Records are retained and disposed of according to GSA records maintenance and disposition schedules, GSA Records Maintenance and Disposition System (CIO P 1820.1), and requirements of the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Program Manager, Center for Applied Solutions, General Services Administration, 1275 First Street, N.E., Washington, DC 20417.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to him/her by sending a request in writing, signed, to the System Manager at the above address. When requesting notification of or access to records covered by this notice, an individual should provide his/her full name, date of birth, region/office, and work location. An individual requesting notification of records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to access.

RECORD ACCESS PROCEDURES:

Individuals wishing to access their own records should contact the system manager at the address above.

CONTESTING RECORD PROCEDURES:

Rules for contesting the content of a record and appealing a decision are contained in 41 CFR 105–64.

RECORD SOURCE CATEGORIES:

The sources for information in the system are the individuals about whom the records are maintained, the supervisors of those individuals, existing GSA systems, sponsoring agency, former sponsoring agency, other Federal agencies, contract employer, former employer, and the U.S. Office of Personnel Management (OPM).

[FR Doc. 2011–20271 Filed 8–9–11; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Lifeline Facebook App Challenge''

AGENCY: Office of the Assistant Secretary for Preparedness and Response, HHS.

ACTION: Notice.

SUMMARY: The ''Lifeline Facebook App Challenge'' is a challenge aimed at multidisciplinary teams of technology developers, entrepreneurs, and members of the disaster preparedness, response and recovery communities to use Facebook as a platform for connecting individuals together through an application (app) that will provide actionable steps for Facebook users to increase their own personal preparedness and strengthen connections within their social networks for the sake of personal preparedness and community resilience. This challenge will provide useful tools for public health promotion and protection, a key goal for the Assistant Secretary for Preparedness and Response (ASPR) in the U.S. Department of Health and Human Services (HHS).

DATES: Effective on August 8, 2011. Submission period for initial entries begins 12:01 am, EDT, August 15th, 2011, and ends 11:59 pm, EDT, September 15th, 2011.

FOR FURTHER INFORMATION CONTACT: Stacy Elmer, 202–205–4246.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Preparedness and Response (formerly the Office of Public Health Emergency Preparedness) was created under the Pandemic and All Hazards Preparedness Act (PAHPA) in the wake of Hurricane Katrina to lead the nation in preventing, preparing for, and responding to the adverse health effects of public health emergencies and disasters. ASPR focuses on preparedness planning and response; building Federal emergency medical operational capabilities; countermeasures research, advance development, and procurement; and grants to strengthen the capabilities of hospitals and health care systems in public health emergencies and medical disasters. The office provides Federal support, including medical professionals through ASPR's National Disaster Medical System, to augment state and local capabilities during an emergency or disaster. Under the PAHPA, HHS is the lead agency for the National Response Framework for Emergency Support Function 8 (ESF). The Secretary of HHS delegates to ASPR the leadership role for all health and medical services support functions in a health emergency or public health event.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. No. 111–358).

Subject of Challenge Competition: Entrants in the ''Lifeline Facebook App Challenge'' are asked to develop an application that leverages Facebook's

function as a communication tool used by many Americans on a day-to-day basis for connecting with friends and strengthening social networks in order to enhance individuals' ability to be prepared for disasters. The app should integrate the concepts of disaster preparedness and community resilience into an app that better prepares individuals for disasters, thereby strengthening national health security—a key priority for HHS. More information about these priority areas can be found at: *http://www.phe.gov.*

Entrants are required to develop an app that enables a Facebook user to invite three Facebook friends to become 'Lifelines,' or points of contact who agree to act as a source of support during disasters. Entrants are encouraged to creatively leverage Facebook's existing networking and geo-locating capabilities to enhance the app's ability to increase personal preparedness, locate potential disaster victims, and streamline information sharing among social networks during disasters.

Eligibility rules for participating in the competition: To be eligible to win a prize under this challenge, an individual or entity shall have complied with all requirements under this section titled Eligibility Rules for Participating:

(1) Shall have registered to participate in the competition under the rules promulgated by the Office of the Assistant Secretary for Preparedness and Response;

(2) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(3) May not be a Federal entity or Federal employee acting within the scope of their employment.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

To be eligible to win a prize under this challenge, registered participants shall be required to sign a liability release in which they agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

As part of the registration process, registered participants shall agree to obtain liability insurance or demonstrate financial responsibility at the time of their entry, in amounts determined by the head of the Office of the Assistant Secretary for Preparedness and, for claims by—

(1) A third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities;

(2) The Federal Government for damage or loss to Government property resulting from such an activity.

(3) As a condition for eligibility, participants will be required to sign an indemnification agreement as a part of the contest registration process, agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

All participants are required to provide written consent to the eligibility rules in this section upon or before submitting an entry. Instructions for providing written consent will be provided during the registration process.

Dates:

- Submission Period for Initial Entries Begins: 12:01 a.m., EDT, August 15th, 2011.
- Submission Period for Initial Entries Ends: 11:59 p.m., EDT, September 15th, 2011.

Registration process for participants:

To register for this challenge participants should:

- Access the *http://www.challenge.gov* Web site and search for the ''Lifeline Facebook App Challenge''.
- For more information on ASPR, visit:
  - *http://www.phe.gov*

Amount of the prize:

- First prize will receive $10,000.
- Second prize $5,000.
- Third prize $1,000.

Basis upon which winner will be selected:

The judging panel will make selections based upon the criteria found in the challenge at *http://www.challenge.gov* which will post shortly.

Additional Information

Intellectual property:

Ownership of intellectual property is determined by the following:

- Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.

License:

Each entrant retains title and full ownership in and to their submission. Entrant expressly reserves all intellectual property rights not expressly granted under this agreement. By participating in the Challenge, each entrant hereby irrevocably grants to the Federal Government (including HHS) a limited, non-exclusive, royalty free, worldwide license and right to use the Submission to the extent necessary to administer the Challenge, and to publicly perform and publicly display the Submission, including without limitation, for advertising and promotional purposes relating to the Challenge.

Team entries:

By submitting a technology product as an entry in response to this Challenge, each team and each team member represents and warrants that,

(a) The technology product, through its creation and its submission as an entry, does not violate any applicable laws.

(b) The technology product, through its creation and its submission as an entry, does not infringe upon or violate intellectual property rights held by any third person or party.

(c) The technology product be section 508 compliant.

Authority: 15 U.S.C. 3719.

Dated: August 4, 2011.

Nicole Lurie,

Assistant Secretary for Preparedness and Response (ASPR).

[FR Doc. 2011–20296 Filed 8–8–11; 11:15 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notification of Single Source Cooperative Agreement Award for the Pasteur Foundation

AGENCY: Department of Health and Human Services (HHS), Office of the Assistant Secretary for Preparedness and Response (ASPR), Office of Policy and Planning (OPP).

ACTION: Notification of Single Source Cooperative Agreement Award for the Pasteur Foundation for Building and Strengthening Core Capacities for Influenza Preparedness and Response in Support of International Health Regulations (2005) Implementation in Selected Countries in Sub-Saharan Africa and Southeast Asia. CFDA#: 93.019

STATUTORY AUTHORITY: Sections 301, 307, 1701 and 2811 of the Public Health Service Act, 42 U.S.C. 241, 242l, 300u, 300hh–10.

AMOUNT OF SINGLE SOURCE AWARD: $1,800,000.

PROJECT PERIOD: September 30, 2011 to September 29, 2014.

SUMMARY: In FY2011, HHS/ASPR/OPP plans to provide a Single Source Cooperative Agreement Award to the Pasteur Foundation to build and strengthen core capacities for influenza preparedness and response in support of International Health Regulations (2005) implementation in Sub-Saharan Africa and Southeast Asia.

ASPR, in close coordination with the HHS Centers for Disease Control and Prevention (CDC), will collaborate with the Pasteur Institute and Pasteur Institute affiliates in Cameroon, Central African Republic, and Senegal in Africa, and Cambodia in Asia to develop and implement activities for preparedness and response for pandemic influenza with applicability to other emerging respiratory infections and public health threats in general. The project will focus on building upon existing routine health systems to further develop IHR (2005) core capacities including communication (IHR National Focal Point communication), workforce development, and surveillance and laboratory diagnostics. This work will be performed in the context of Article 44 of the IHR (2005), which directs State Parties to collaborate with each other to detect, assess, and respond to events, and to develop, strengthen, and maintain core public health capacities for surveillance and response.

Single Source Justification

In the recent past, ASPR and Pasteur Institute collaborated on developing epidemiological surveillance capacity for influenza-like illness (ILI) in five countries in Africa and three countries in Asia as the basis for developing the capacities to detect influenza viruses with epidemic or pandemic potential. As a result of this project and the collaboration with other international partners, eighty surveillance sites were established among the eight countries, the laboratories in Cameroon and Cambodia became National Reference Laboratories for avian influenza, and all eight laboratories in the host-countries became WHO National Influenza Centers.

In Southeast Asia, the International Network of Pasteur Institutes is strategically positioned to study the natural history of Highly Pathogenic Avian Influenza (HPAI H5N1). Cambodia and its affiliated Pasteur Institute are important partners in the region that can act as a hub for training and sharing of technical expertise as its National Influenza Center can identify and isolate HPAI H5N1 strains and has experience in Influenza-Like Illness (ILI) and Severe Acute Respiratory Infections (SARI) surveillance.

In Sub-Saharan Africa, Cameroon has built a surveillance system and the *Centre Pasteur of Cameroun* under the Ministry of Health has been designated by WHO as a National Influenza Center. Moreover, the *Centre Pasteur du Cameroun* is also the National IHR Focal Point, making it a key partner for IHR (2005) implementation. The Pasteur Institute of Bangui in the Central African Republic (CAR) is recognized by WHO as a National Influenza Center. This is the only organization capable of performing influenza diagnostics in the country, which was able to detect the first case of H1N1 in 2010. This recognition will be leveraged to further strengthen and interlink the current surveillance network for highly pathogenic avian influenza H5N1. A solid partnership between Cameroon and CAR is particularly important as this is a region in Sub-Saharan Africa where the virus has been detected. In Senegal, the Pasteur Institute of Dakar has set up the influenza surveillance sentinel system, is reporting to the Ministry of Health, and is hosting the National Influenza Center. Senegal has a leading role in the West African region on influenza, and with its involvement in regional CDC's Field Epidemiology Training Program, could become an important leader with regard to IHR (2005) implementation. In addition, Senegal is the one of the two countries in Africa that currently has the potential to develop influenza vaccine manufacturing technology in the short- to medium-term, if supported by international partners, including ASPR.

In making this award, ASPR will capitalize on the Pasteur Institute International Network and its access to francophone countries in Africa and with a strong French influence in Asia. Based on the lessons learned from previous collaborations, this new investment will allow HHS to contribute to build international capacity in collaboration with a prestigious international partner by sharing experiences, strategies, and best practices, and other technical resources in helping developing countries improve their capabilities for pandemic influenza and implement IHR core capacities.

In summary, the Pasteur Institute's strong collaborative relationships with foreign governments, programmatic support, and familiarity with host-country involvement in influenza preparedness will be critical for the viability of this cooperative agreement. This collaboration will support HHS efforts to continue building capacity abroad with the ultimate intent of detecting, stopping, slowing or otherwise limiting the spread of a pandemic to the United States, ultimately enhancing the health security of the American population.

ADDITIONAL INFORMATION: The agency program contact is Dr. Maria Julia Marinissen, who can be contacted at 202–205–4214 or *Maria.Marinissen@hhs.gov*.

Dated: August 5, 2011.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2011–20312 Filed 8–9–11; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-11–11JQ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Data Collection for Evaluation of Education, Communication, and Training Activities—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Global Migration and Quarantine (DGMQ), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) Division of Global Migration and Quarantine (DGMQ) is requesting a three year approval for a generic clearance to conduct evaluation research in order to plan and implement health communication, education, and training activities to improve health and prevent the spread of disease. These activities include communicating with international travelers and other mobile populations, training healthcare providers, and educating public health departments and other federal partners.

The information collection for which approval is sought is in accordance with DGMQ's mission to reduce morbidity and mortality among immigrants, refugees, travelers, expatriates, and other globally mobile populations, and to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. This mission is supported by delegated legal authorities.

First, section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services (HHS) to make and enforce regulations necessary to prevent the introduction, transmission or spread of communicable diseases from foreign countries or possessions into the United States and from one state or possession into any other state or possession. These regulations are codified in 42 Code of Federal Regulations (CFR) parts 70 and 71.

In addition, the Secretary of Health and Human Services also has the legal authority to establish regulations outlining the requirements for the medical examination of aliens before they may be admitted into the United States. This authority is provided under Section 212(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(1)(A)) and Section 325 of the Public Health Service Act. These regulations are codified in 42 CFR part 34, which establish requirements that determine whether aliens can be admitted into the United States.

Successful implementation of DGMQ's regulatory authority and public health mission as outlined above requires a variety of communication, training and educational activities involving staff, partners, mobile populations and the general public. DGMQ conducts these activities in order to inform, educate and empower key audiences with respect to important public health issues.

This generic OMB clearance will allow DGMQ to quickly collect information about the knowledge, attitudes, and behaviors of key audiences (such as refugees, immigrants, migrants, international travelers, travel industry partners, healthcare providers, non-profit agencies, customs brokers and forwarders, schools, state and local health departments) to help improve and inform these activities during both routine and emergency public health events. This generic OMB clearance will help DGMQ continue to refine these efforts in a timely manner, and will be especially valuable for communication activities that must occur quickly in response to public health emergencies.

DGMQ staff will use a variety of data collection methods for this proposed project: Interviews, focus groups, group discussions, surveys, and pre-post tests. Depending on the research questions and audiences involved, data may be gathered in-person, by telephone, online, or using some combination of these formats. Data may be collected in quantitative and/or qualitative forms. Numerous audience variables will be assessed under the auspices of this generic OMB clearance. These include, but are not limited to, knowledge, attitudes, beliefs, behavioral intentions, practices, behaviors, skills, self-efficacy, and information needs and sources. Insights gained from evaluation research will assist in the development, refinement, implementation, and demonstration of outcomes and impact of communication, education, and training activities.

DGMQ estimates that 22,166 hours will be involved in evaluation research activities each year. The information being collected will not impose a cost burden on the respondents beyond that associated with their time to provide the required data.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General Public/Healthcare Professionals Focus groups.	Screening form	3,000	1	10/60	500
	Focus Groups	1,500	1	90/60	2,250
General Public/Healthcare Professionals Interviews.	Screening Form	2,000	1	10/60	333
	Interviews	1,000	1	60/60	1,000
General Public/Healthcare Professionals Large Group Discussions.	Screening Forms	2,000	1	10/60	333
	Large Group Discussion	1,000	1	90/60	1,500
General Public/Healthcare Professionals Surveys	Screening Forms	15,000	1	10/60	2,500
	Surveys	7,500	1	45/60	5,625
General Public/Healthcare Professionals Pre/post tests.	Screening Forms	15,000	1	10/60	2,500
	Pre/Post Tests	7,500	1	45/60	5,625
Total					22,166

Dated: August 4, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–20343 Filed 8–9–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-11–11JD]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of Dating Matters: Strategies To Promote Healthy Teen Relationships™—New—National Center for Injury Prevention and Control—Centers for Disease Control and Prevention

Background and Brief Description

Dating Matters: Strategies To Promote Healthy Teen Relationships™ is the Centers for Disease Control and Prevention's new teen dating violence prevention initiative.

Recently, efforts to prevent teen dating violence have grown, particularly in schools, among policymakers, and among sexual violence and domestic violence coalitions. Now many states and communities also are working to stop teen dating violence. However, these activities vary greatly in quality and effectiveness. To address the gaps, CDC has developed *Dating Matters,* a comprehensive teen dating violence prevention program based on the current evidence about what works in prevention.

Dating Matters focuses on high-risk, urban communities where participants include: middle school students age 11 to 14 years; middle school parents; brand ambassadors; educators; school leadership; program implementers; community representatives; and local health department representatives in four high-risk urban communities. The primary goal of the current proposal is to conduct an outcome and implementation evaluation of Dating Matters in four metropolitan cities to determine its feasibility, cost, and effectiveness. Within each city 12 schools will implement the two models of teen dating violence prevention (48 schools total over 4 sites). Our burden estimates are based on each school having 600 students, with 200 students per grade (6th, 7th, and 8th grades). Therefore the sampling frame for this data collection is 48,000 for the three years of data collection covered by this OMB package (5 cohorts of 200 students each in 48 schools; 5 x 200 x 48). The 5 cohorts will be students who are in 6th, 7th and 8th grade in year 1 of data collection, students in 6th grade in years 2 and 3 of data collection. That means the sampling frame for parents, given that we would only include one parent per student, is also 48,000 for the three years of data collection covered by this package. Based on our research and consultation with middle schools, most schools with approximately 600 students have approximately 40 staff. If we assume 40 educators per school, the sampling frame for the educator sample is 1,920. The following are explanations of estimated burden by respondent.

Students: We will use random selection to identify a subsample of students from each cohort from each school to participate in the evaluation. We estimate that we will enroll 40 students per cohort per school, for a total of 1,920 students per grade and 9,600 for the entire sample of 5 cohorts covered under this OMB package.

Parents: We will recruit all parents participating in the parent curricula and select an equal number of parents from the standard of care schools to serve as a matched comparison group. We will enroll 40 parents per grade per school, with 1920 parents per grade, so 5,760 parents per year.

Educators: We expect that 85% of all educators will participate. With an estimated 40 educators per 48 schools (1920 total), 85% is 1632 educators.

School data extractors: We will recruit one data extractor per each school (48 extractors total) to extract school data to be used in conjunction with the outcome data for the students. Individual level school data will only be collected for students participating in the evaluation, so this data will reflect the same sampling frame as the student survey data.

School leadership: We will recruit one school leadership (*e.g.,* principal, vice principal) per 48 schools, the number of respondents will be 48.

Local Health Department representative: We will recruit four local health department representatives working on the initiative per community, the number of respondents will be 16.

Parent Program Manager: With a maximum of one parent program manager per community, the number of program manager respondents will be 4.

Community Representative: We will recruit 10 community representatives per site, the number of respondents will be 40.

Parent Curricula Implementers: Each school/neighborhood implementing the comprehensive approach will have one male and one female parent implementing the parent programs with six comprehensive school/neighborhood clusters per community plus one additional pair per site (will fill-in as needed), respondents will be (2x7x4) 56 implementers.

Student Curricula Implementers: We will have six student curricula implementers per school that will be completing fidelity instruments, the total number of respondents will be 288.

Safe Dates Implementers: We will have 3 Safe Dates implementers per the 48 schools, who will implement the 8th grade Safe Dates program, the number of respondents for the Safe Dates implementer survey will be 144.

Brand Ambassadors: The Brand Ambassador Implementation Survey will be provided to each brand ambassador in each community. With a maximum of 20 brand ambassadors per community, the feedback form will be collected from a total of 80 brand ambassadors.

Communications Implementers (''Brand Ambassador Coordinators''): The Communications Campaign Tracking form will be provided to each

brand ambassador coordinator in each community. With a maximum of one brand ambassador coordinator per community, the feedback form will be collected from a total of 4 brand ambassador coordinators.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
Student Program Participant	Student Outcome Survey Baseline	9600	1	1.5	14400
Student Program Participant	Student Outcome Survey Follow-up	9600	2	1.5	28800
School data extractor	School Indicators	48	200	15/60	2400
Parent Program Participant	Parent Outcome Survey	5760	2	1	11520
Educator	Educator Outcome Survey	1632	1	30/60	816
Student Brand Ambassador	Brand Ambassador Implementation Survey.	80	2	20/60	53
School leadership	School Leadership Capacity and Readiness Survey.	48	1	1	48
Parent Curricula Implementer (6.1 log + attendance).	Parent Program Fidelity 6th Grade Session 1.	56	3	15/60	42
Parent Curricula Implementer (6.2 log+ attendance).	Parent Program Fidelity 6th Grade Session 2.	56	3	15/60	42
Parent Curricula Implementer (6.3 log + attendance).	Parent Program Fidelity 6th Grade Session 3.	56	3	15/60	42
Parent Curricula Implementer (6.4 log + attendance).	Parent Program Fidelity 6th Grade Session 4.	56	3	15/60	42
Parent Curricula Implementer (6.5 log + attendance).	Parent Program Fidelity 6th Grade Session 5.	56	3	15/60	42
Parent Curricula Implementer (7.1 log + attendance).	Parent Program Fidelity 7th Grade Session 1.	56	3	15/60	42
Parent Curricula Implementer (7.3 log + attendance).	Parent Program Fidelity 7th Grade Session 3.	56	3	15/60	42
Parent Curricula Implementer (7.5 log + attendance and cost).	Parent Program Fidelity 7th Grade Session 5.	56	3	15/60	42
Safe Dates Implementer (implementation).	Safe Dates Implementation Survey	144	1	1	144
Student Curricula Implementer (6.1 log + attendance).	Student Program Fidelity 6th Grade Session 1.	288	1	15/60	72
Student Curricula Implementer (6.2 log + attendance).	Student Program Fidelity 6th Grade Session 2.	288	1	15/60	72
Student Curricula Implementer (6.3 log + attendance).	Student Program Fidelity 6th Grade Session 3.	288	1	15/60	72
Student Curricula Implementer (6.4 log + attendance).	Student Program Fidelity 6th Grade Session 4.	288	1	15/60	72
Student Curricula Implementer (6.5 log + attendance).	Student Program Fidelity 6th Grade Session 5.	288	1	15/60	72
Student Curricula Implementer (6.6 log + attendance).	Student Program Fidelity 6th Grade Session 6.	288	1	15/60	72
Student Curricula Implementer (7.1 log + attendance).	Student Program Fidelity 7th Grade Session 1.	288	1	15/60	72
Student Curricula Implementer (7.2 log + attendance).	Student Program Fidelity 7th Grade Session 2.	288	1	15/60	72
Student Curricula Implementer (7.3 log + attendance).	Student Program Fidelity 7th Grade Session 3.	288	1	15/60	72
Student Curricula Implementer (7.4 log + attendance).	Student Program Fidelity 7th Grade Session 4.	288	1	15/60	72
Student Curricula Implementer (7.5 log + attendance).	Student Program Fidelity 7th Grade Session 5.	288	1	15/60	72
Student Curricula Implementer (7.6 log + attendance).	Student Program Fidelity 7th Grade Session 6.	288	1	15/60	72
Student Curricula Implementer (8.1 log + attendance).	Student Program Fidelity 8th Grade Session 1.	288	1	15/60	72
Student Curricula Implementer (8.2 log + attendance).	Student Program Fidelity 8th Grade Session 2.	288	1	15/60	72
Student Curricula Implementer (8.3 log + attendance).	Student Program Fidelity 8th Grade Session 3.	288	1	15/60	72
Student Curricula Implementer (8.4 log + attendance).	Student Program Fidelity 8th Grade Session 4.	288	1	15/60	72
Student Curricula Implementer (8.5 log + attendance).	Student Program Fidelity 8th Grade Session 5.	288	1	15/60	72
Student Curricula Implementer (8.6 log + attendance).	KK: Student Program Fidelity 8th Grade Session 6.	288	1	15/60	72
Student Curricula Implementer (8.7 log + attendance).	Student Program Fidelity 8th Grade Session 7.	288	1	15/60	72

ESTIMATED ANNUALIZED BURDEN—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
Student Curricula Implementer (8.8 log + attendance).	Student Program Fidelity 8th Grade Session 8.	288	1	15/60	72
Student Curricula Implementer (8.9 log + attendance).	Student Program Fidelity 8th Grade Session 9.	288	1	15/60	72
Student Curricula Implementer (8.10 log + attendance).	Student Program Fidelity 8th Grade Session 10.	288	1	15/60	72
Communications Implementer	Communications Campaign Tracking.	4	4	20/60	5
Local health department representative.	Local Health Department Capacity and Readiness.	16	1	2	32
Parent Program Manager	Parent Program Capacity and Readiness.	4	1	1	4
Community Representative	Community Capacity and Readiness	40	1	1	40
Total					60182

Dated: August 4, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–20346 Filed 8–9–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5058–N2]

Medicare Program; Section 3113: The Treatment of Certain Complex Diagnostic Laboratory Tests Demonstration; Extension of the Deadline for Submission of Supporting Information

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of extension of the deadline for submission of supporting information.

SUMMARY: This notice extends the deadline for submitting supporting information to request a temporary code under the Treatment of Certain Complex Diagnostic Laboratory Tests Demonstration. The deadline for submitting supporting information to request a temporary code under the Demonstration, which ended on August 1, 2011, has been extended to September 6, 2011.

DATES: Supporting information to request a temporary code under the Demonstration is due to CMS on or before September 6, 2011.

ADDRESSES: Supporting information should be mailed to the following address: Centers for Medicare & Medicaid Services, *Attention:* Linda R. Lebovic, 7500 Security Boulevard, Mail Stop: C4–14–15, Baltimore, Maryland 21244–1850.

Please refer to file code [CMS–5058–N] on all supporting information for a temporary G-code under the Demonstration. Because of staffing and resource limitations, we cannot accept proposals by facsimile (Fax) transmission. Hard copies and electronic copies must be identical.

FOR FURTHER INFORMATION CONTACT: Linda R. Lebovic at (410) 786–3402 or by e-mail at *ACA3113labdemo@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: On July 5, 2011, we published a notice in the **Federal Register** (76 FR 39110 through 39111) to inform interested parties of an opportunity to participate in the Treatment of Certain Complex Diagnostic Laboratory Tests Demonstration. The Demonstration is mandated by section 3113 of the Affordable Care Act. The notice also serves to notify interested parties that they must obtain a temporary code from CMS for tests currently billed using a ''not otherwise classified (NOC)'' code but that would otherwise meet the criteria set forth in section 3113 for being a complex diagnostic laboratory test under the Demonstration.

Following the publication of the July 5, 2011 notice, CMS received requests from the public to extend the deadline beyond August 1, 2011. We believe we can accommodate the public's request to extend the deadline for submitting the supporting information needed to request a Temporary Demonstration G-code and still begin payment under the Demonstration beginning January 1, 2012 as planned. We have decided to extend the deadline for submitting supporting information to September 6, 2011.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: *August 4, 2011.*

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–20304 Filed 8–5–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Understanding Urban Indians' Interactions with ACF Programs and Services.

OMB No.: New Collection.

Description: As part of the ''Understanding Urban Indians' Interactions with ACF Programs and Services'' research study, site visits will be conducted to three to five urban areas with a high percentage of Indians within the population, including Anchorage, Alaska. Members of the research study team will utilize a field discussion guide to collect information from staff members at relevant programs and organizations (*e.g.,* American Indian Organizations, social service agencies serving urban Indians) in these areas.

The goal of this information collection is to assess the challenges and context for family self-sufficiency of urban Indians and their interactions with services and programs offered by ACF.

The information gathered will help to generate recommendations and action items for ACF in seeking to better understand and meet the needs of the urban Indian population.

Respondents: Information will be collected by members of the research study team from staff members at relevant programs and organizations (*e.g.,* American Indian Organizations, social service agencies serving urban Indians) in three to five urban areas with a high percentage of Indians within the population, including Anchorage, Alaska. It is anticipated that up to 9 staff members at each program or organization will be interviewed, for a total of up to 27 interviews annually.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Field discussion guide	27	1	1.5	40.5

Estimated Total Annual Burden Hours: The estimated total annual burden hours is 40.5 hours.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. *E-mail address: OPREinfocollectionPacf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 3, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–20069 Filed 8–9–11; 8:45 am]

BILLING CODE 4184–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. 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 Deafness and Other Communication Disorders Advisory Council.

Date: September 16, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: 10:15 a.m. to 1:35 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8693, *jordanc@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/ndcdac/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20319 Filed 8–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of General Medical Sciences Special Emphasis Panel, August 11, 2011, 1 p.m. to August 11, 2011, 4 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Room

3AN12, Bethesda, MD 20892 which was published in the **Federal Register** on July 26, 2011, 76 FR 44598.

The meeting was rescheduled for August 12, 2011, from 1 p.m. to 4 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12, Bethesda, MD 20892. The meeting is closed to the public.

Dated: August 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20323 Filed 8–9–11; 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 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: Center for Scientific Review Special Emphasis Panel; PAR Panel: Technologies for Healthy Independent Living.

Date: September 9, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@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: August 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20326 Filed 8–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Open: September 13, 2011, 9 a.m. to 1 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: September 13, 2011, 1 p.m. to 2:15 p.m.

Agenda: Review of grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: September 13, 2011, 2:15 p.m. to 5 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20325 Filed 8–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; P50 Review.

Date: September 1, 2011.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Kausik Ray, PhD, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *rayk@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; P30 Review.

Date: September 7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; P50 Grant Review.

Date: September 14, 2011.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd,. Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20320 Filed 8–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: August 31–September 1, 2011.

Time: August 31, 2011, 7:45 a.m. to 5:30 p.m.

Agenda: To review and evaluate Laboratory of Clinical and Translational Studies.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892.

Time: September 1, 2011, 7:45 a.m. to 5:30 p.m.

Agenda: To review and evaluate Laboratory of Neuroimaging.

Place: National Institutes of Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Terrance Level Room 508/509, Bethesda, MD 20892.

Contact Person: Trish Scullion, Chief of Administrative Branch, National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 3061, Rockville, MD 20852, 301–443–6076.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: August 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20317 Filed 8–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0062]

Privacy Act of 1974; Department of Homeland Security United States Coast Guard DHS/USCG–027 Recruiting Files System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to update and reissue an existing Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard–027 Recruiting Files System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to collect and maintain records regarding its enlistee recruiting program. As a result of the required biennial review of this system, category of records and retention and disposal have been updated and one routine use has been added to allow for sharing with Department of Defense. This updated system will replace the existing system of records.

DATES: Submit comments on or before September 9, 2011. This new system will be effective September 9, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0062 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket, to read background documents, or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Marilyn Scott-Perez (202–475–3515), Privacy Officer, United States Coast Guard, 2100 2nd Street, SW., Stop 7101, Washington, DC 20593. For privacy issues please contact: Mary Ellen

Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue an existing DHS system of records titled, ''DHS/United States Coast Guard–027 Recruiting Files System of Records.'' This record system will allow DHS/USCG to collect and preserve records related to the recruiting program. The collection and maintenance of this information will assist DHS/USCG in meeting its obligation to administer the USCG's recruiting program.

As a result of the biennial review of this system, records have been updated in the ''Categories of Records in the system'' section to include an individual's home address. The ''Retention and disposal'' category was amended to reflect:

- Completed Coast Guard Selection Test (CGST), including Short Basic Test Battery (SBTB) answer sheets sent to Coast Guard Institute by Recruiting Offices are destroyed when two years old (SSIC 1500 Item 17a, (NC1–26–80–4, item 338j(1)) and 17b (NC1–26–80–4, item 338j(2))).
- Officer candidate files for selected applicants are filed in the permanent Official Military Personnel Folder (SSIC 1100, item 1a, NC1–26–76–2, item 583a). Files for non-selected applicants are destroyed six months after deadline dates for class which application is made (SSIC1100, item 1b, NC1–26–76–2, item 583b). Direct Commission Programs Applicant files; selected applicants records are filed in the permanent Official Military Personnel Folder (SSIC 1100, item 2a, NC1–26–79–2, item 584a); non-selected applicants files are destroyed one year from date of board by which considered (SSIC 1100, item 2b, NC1–26–79–2, item 584b). OCS and direct commission applicant files containing copies of applications for appointment in the Coast Guard Reserve are destroyed when one year old (SSIC 100, Item 3b, NC1–26–80–4, item 337b).
- Recruiting office jackets of successful and unsuccessful applicants for enlistment are destroyed one year after enlistment or rejection (SSIC 1100, Item 3a, NC1–26–80–4, item 337a).
- General information files with the recruiting and enlistment are destroyed after two years (SSIC 1100 item 4, NC1–26–76–2, Item 587).

One routine use (I) was added to allow DHS to share these records with officials and employees of the Department of Defense in the performance of their official duties related to the qualification of applicants for enlistment or commissioning, and for the analysis of and recordation of military forces levels.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/United States Coast Guard–027 Recruiting Files System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records DHS/USCG–027

SYSTEM NAME:

DHS/USCG–027 Recruiting Files System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained within the Recruiting Analysis and Tracking System (RATS) at the United States Coast Guard Recruiting Command, Arlington, Virginia, United States Coast Guard Operations Systems Center, Kearneysville, West Virginia, USCG Headquarters in Washington, DC, and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include records and correspondence pertaining to prospective applicants, applicants for regular and reserve enlisted and officer programs, and any other individuals who have initiated correspondence pertaining to enlistment in the United States Coast Guard. This system also covers civilians and military personnel who have taken the following tests: Armed Services Vocational Aptitude Battery; United States Navy Officer Qualification Test; OQT; United States Navy and United States Marine Corps Aviation Selection Test, AST; United States Navy Basic Test Battery (BTB), BTB (retests); the Cooperative Tests for Advanced Electronic Training (AET TESTS); the 16 Personality Fact Test used for screening of enlisted personnel for recruiting duty; and Professional Examination for Merchant Mariners.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Individual's home address;
- Date of birth;
- Social security number;
- Program of interest;
- Citizenship;
- Marital status;
- Race;
- Ethnicity;
- Gender;
- Personal history;
- E-mail and phone contact information;
- Education;
- Test scores, college majors, grades and transcripts;
- Professional qualifications;
- Adverse or disqualifying information, such as criminal record, medical data, and credit history;
- Mental aptitude;
- Medical documentation;
- Medical waivers;
- Physical qualifications;
- Character and interview appraisals;
- National Agency Checks and certifications;
- Service performance;
- Advertising responses;
- Applicant initiated inquiries;
- Congressional or special interests;
- Marketing data collected through the USCG recruiting Web site and telephone queries made by prospects; and
- Credit report results (per Homeland Security Presidential Directive–12).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 503; 14 U.S.C. 350–373, 632; COMDTINST M1100.2E, Coast Guard Recruiting Manual.

PURPOSE(S):

The purpose of this system is to document recruiting efforts and

maintain recruiting files for the United States Coast Guard and United States Coast Guard Reserves. This system also provides test results if an applicant (military or civilian) applies for an officer program, or is already in the military and is recruited to a training program.

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, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, state, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To officials and employees of the Veterans Administration and Selective Service System in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

I. To officials and employees of the Department of Defense in the performance of their official duties related to the qualification of applicants for enlistment or commissioning, and for the analysis of and recordation of military force levels.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved alphabetically by name and social security number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The system maintains a real-time auditing function of individuals who access the system.

RETENTION AND DISPOSAL:

Completed Coast Guard Selection Test (CGST), including Short Basic Test Battery (SBTB) answer sheets sent to Coast Guard Institute by Recruiting Offices are destroyed when two years old (SSIC 1500 Item 17a, (NC1–26–80–4, item 338j(1)) and 17b (NC1–26–80–4, item 338j(2))).

Officer candidate files for selected applicants are filed in the permanent Official Military Personnel Folder (SSIC 1100, item 1a, NC1–26–76–2, item 583a) Files for non-selected applicants are destroyed 6 months after deadline dates for class which application is made (SSIC1100, item 1b, NC1–26–76–2, item 583b) Direct Commission Programs Applicant files; selected applicants records are filed in the permanent Official Military Personnel Folder (SSIC 1100, item 2a, NC1–26–79–2, item 584a); Non-selected Applicants files are destroyed 1 year from date of board by which considered. (SSIC 1100, item 2b, NC1–26–79–2, item 584b) OCS and

direct commission applicant files containing copies of applications for appointment in the Coast Guard Reserve are destroyed when 1 year old. (SSIC 1100, Item 3b, NC1–26–80–4, item 337b)

Recruiting office jackets of successful and unsuccessful applicants for enlistment are destroyed one year after enlistment or rejection. (SSIC 1100, Item 3a, NC1–26–80–4, item 337a) General information files with the recruiting and enlistment are destroyed after two years (SSIC 1100 item 4, NC1–26–76–2, Item 587).

SYSTEM MANAGER AND ADDRESS:

Commander, United States Coast Guard Personnel Command, 2100 2nd Street, SW., Stop 7801, Washington, DC 20539.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Commandant (CG–611), U.S. Coast Guard, *Attn:* FOIA Coordinator, 2100 2nd Street, SW., Stop 7101, Washington, DC 20593.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Specify when you believe the records would have been created,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the USCG will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from USCG recruiting personnel and administrative staff. Medical personnel or private physicians providing consultations or patient history. Character and employee references. Educational institutions, staff and faculty members. Selective Service System. Local, state, and Federal law enforcement agencies. Prior or current military service records. Members of Congress. Other officials and employees of the Coast Guard, Department of Defense and components thereof, in the performance of their duties and as specified by current instructions and regulations promulgated by competent authority. Recruiting officials and individuals being recruited or who have been recruited by the United States Coast Guard, United States Marine Corps, United States Navy, and the United States Navy Bureau of Medicine.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: July 8, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–20225 Filed 8–9–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0068]

Privacy Act of 1974; Department of Homeland Security/United States Secret Service—001 Criminal Investigation Information System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's biennial review of system of record notices, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Secret Service—001 Criminal Investigation Information System of Records.'' As a result of biennial review of this system, records have been updated within the categories of records, routine uses, and notification procedures of this system of records notice. Additionally, the Department of Homeland Security previously published a Final Rule in the **Federal Register** to exempt this system of records from certain provisions of the Privacy Act; the current updates to this system of records do not impact the nature of the exemptions claimed. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before September 9, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0068 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket, to read background documents, or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Latita Payne (202–406–6370), Privacy Officer, United States Secret Service, 245 Murray Lane, SW., Building T–5, Washington, DC 20223. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and as part of the Department of Homeland Security's (DHS) biennial review of system of record notices, DHS/United States Secret Service (USSS) proposes to update and reissue a current DHS system of records titled, DHS/USSS–001 Criminal Investigation Information System. As a result of biennial review of this system, records have been updated within the categories of individuals covered in this system and categories of records in this system in order to further define, narrow, and eliminate duplicative categories.

Routine Use P was deleted to eliminate duplicative information. The notification procedures were updated to better reflect the reason for exemption and the method for access. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use of their records, and to assist the individual to more easily find files within the agency. Below is a description of the Criminal Investigation Information System.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

SYSTEM OF RECORDS:

Department of Homeland Security (DHS)/United States Secret Service (USSS)–001.

SYSTEM NAME:

DHS/USSS–001 Criminal Investigation Information System.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Records are maintained at the United States Secret Service Headquarters, 950 H St., NW., Washington, DC 20223 and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- Individuals who have been or are currently the subject of a criminal investigation by DHS/USSS in connection with the performance by that agency of its authorized criminal investigative functions;
- Individuals who are informants, suspects, defendants, fugitives, released prisoners, organized crime figures, or those associated with these individuals who have been identified by DHS/USSS during the course of official USSS criminal investigations or by information supplied by other law enforcement agencies, government units, and the general public;
- Individuals who are witnesses and victims of crime as related to official USSS investigations;
- Individuals who are complainants and correspondents; and
- Individuals who are payees, registered owners, or endorsers of stolen or lost obligations and other securities of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Records containing information compiled for the purpose of identifying individual criminal offenders and informants, suspects, defendants, fugitives, released prisoners, organized crime figures, or those associated with these individuals in furtherance of an official criminal investigation. The records consist of identifying data, including, but not limited to, name, date of birth, Social Security number, telephone number, home address, business address, spouse and family information, physical description, notations of arrest, the nature and imposition of criminal charges, sentencing, confinement, release, and parole or probations status concerning criminal offenders, defendants and suspects, witnesses, victims, and law enforcement personnel;
- Records containing reports identifiable with an individual, compiled at various stages of the process of enforcement of criminal laws from arrest or indictment through release from supervision, including reports of informants and investigators, for the purpose of a criminal investigation;
- Records containing investigatory material compiled for law enforcement purposes, including but not limited to, handwriting exemplars; laboratory analyses of inks and papers; handwriting analyses; petitions for the remission of forfeitures; notice of non-receipt of Treasury drafts; affidavits of forged endorsements; opinions of the examiner of questioned documents; reports or opinions from the examination of computer evidence; reports or opinions from the examination of altered cellular telephones; certificates by owners of U.S. registered securities concerning forged requests for payments or assignments; applications for relief on account of loss, theft, or destruction of U.S. Savings Bonds or checks; photographic reproductions of obligations and other securities of the United States; contraband items; claims against the United States for the proceeds of government checks and bonds; reports necessary for the settlement of check and bond claims; polygraph case files; forensic examination information; search warrants and search warrant returns; indictments; certified inventories of property held as evidence; sworn and unsworn witness statements; state, local, and foreign criminal investigative information and reports; names and telephone numbers of persons intercepted by electronic, mechanical, or other device under the provisions of 18 U.S.C. § 2510 et.seq. compiled during the lawful course of a criminal or civil investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, Public Law 107–296; Federal Records Act, 44 U.S.C. 3101; 5 U.S.C. 301; 18 U.S.C. 3056 and 3056A; and 6 CFR part 5.

PURPOSE(S):

The purpose of this system is to collect and maintain criminal records related to individuals being investigated by DHS/USSS in connection with USSS' criminal law enforcement functions, including but not limited to investigating counterfeiting offenses, financial institution fraud, computer and telecommunications fraud, false identification documents, access device fraud, advance fee fraud, and electronic funds transfer fraud.

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, all or a portion of the records or information contained in this system may be disclosed outside the Department of Homeland Security (DHS) as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other federal agency conducting

litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To employees and officials of financial and commercial business firms and to private individuals, information pertaining to actual or suspected criminal offenders where such disclosure is considered reasonably necessary for the purpose of furthering USSS efforts to investigate the activities of and apprehend criminal offenders and suspected criminal offenders.

I. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction.

J. To an appropriate federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to agency's decision concerning the hiring or retention of an individual, the issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

K. To the Integrated Automated Fingerprint Identification System (IAFIS) managed by the Department of Justice, Federal Bureau of Investigations in connection with USSS's utilization.

L. To federal, state, and local government agencies foreign or domestic, having prosecutorial and civil law enforcement functions for use by attorneys, magistrates, and judges, parole or probation authorities and other law enforcement authorities for the purpose of developing a criminal or civil investigation, prosecuting, sentencing, or determining the parole and probation status of criminal offenders or suspected criminal offenders.

M. To personnel of other federal, state, and local law enforcement agencies, foreign or domestic, for the purpose of developing information on subjects involved in USSS criminal investigations and assisting other law enforcement agencies in the investigation and prosecution of violations of the criminal laws which those agencies are responsible for enforcing.

N. To personnel of federal, state, and local governmental agencies, foreign and domestic, where such disclosure is considered reasonably necessary for the purpose of furthering USSS efforts to investigate the activities of and apprehend criminal offenders and suspected criminal offenders.

O. To personnel of federal, state, and local governmental agencies, foreign and domestic, where there is a showing of reasonable necessity to obtain such information to accomplish a valid law enforcement purpose as agreed to by the USSS.

P. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records in this system are stored in secure facilities and/or behind locked doors. Electronic records media, such as magnetic tape, magnetic disk, digital media, and CD ROM are stored in proper environmental controls.

RETRIEVABILITY:

This system is indexed by name, address, vehicle license number, and/or telephone number, and is retrieved

through computer search of magnetic media indices both at Headquarters and in the field offices. Additionally, subjects are retrievable from the computerized files by physical description. Access to the physical files containing records is by case number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS and USSS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored, processed, and transmitted. Access to the computer system containing the records in this system is limited to those individuals who have a USSS approved need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

All judicial cases are retained for a period of 30 years after case closure (unless otherwise required to be held permanently for transfer to the National Archives and Records Administration). Non-judicial criminal investigative cases (except non-judicial check and bond cases) are retained for 10 years. Non-judicial check claim and bond forgery cases are retained for 5 years. Administrative files of an investigatory nature are retained for 5 years. Investigations for other districts are retained for 2 years. Receipts are retained for a variety of time periods depending on the case file to which they pertain. Arrest history forms are held permanently for transfer to the National Archives and Records Administration. Headquarters criminal investigative case files are retained for 30 years. Consensual and non-consensual interception indices are held for 10 years or when investigative use no longer exists, whichever is longer. Fingerprint and photograph files are retained at varying intervals based on case type and in accordance with record retention schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Investigations, U.S. Secret Service, 245 Murray Lane SW., Building T–5, Washington, DC 20223.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS/USSS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the USSS FOIA Officer, 245 Murray Drive SW., Building T–5, Washington, DC 20223. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief FOIA Officer, Department of Homeland Security, whose contact information can be found at *http://www.dhs.gov/foia.*

When seeking records about yourself from this system of records or any other USSS system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Specify when you believe the records would have been created,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information USSS may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The Secretary of Homeland Security has exempted this system from subsections (e)(4)(I) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and (k)(3); therefore, records sources shall not be disclosed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act and the limitations therein, this system is exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). In addition, to the extent a record contains information from other exempt systems of records; USSS will rely on the exemptions claimed for those systems.

Dated: July 14, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–20226 Filed 8–9–11; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0053]

Privacy Act of 1974; Department of Homeland Security United States Coast Guard—020 Substance Abuse Prevention and Treatment Program System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue an existing Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard—020 Substance Abuse Prevention and Treatment Program System of Records.'' This system of records notice allows the Department of Homeland Security/United States Coast Guard to collect and maintain the United States Coast Guard's Substance Abuse Prevention and Treatment Program records. As a result of a biennial review of this system, categories of individuals, categories of records, and the purpose of the system have been updated. This updated system will replace the previously published system of records in the Department of Homeland Security's inventory of record systems.

DATES: Submit written comments on or before September 9, 2011. This new

system will be effective September 9, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0053 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket, to read background documents, or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Marilyn Scott-Perez (202–475–3515), Privacy Officer, United States Coast Guard, 2100 2nd Street, SW., Stop 7101 Washington, DC 20593. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue an existing DHS system of records titled, ''DHS/USCG–020 Substance Abuse Prevention and Treatment Program System of Records.'' This system allows the USCG to collect and maintain the USCG's Substance Abuse Prevention and Treatment Program records.

As a result of the biennial review of this system, records have been updated in the categories of individuals covered by the system section to specifically identify Coast Guard personnel, active duty and reserve receiving substance abuse treatment (inpatient or outpatient), and those requiring follow-up or aftercare substance abuse treatment services. Records in the categories of records in the system have been updated to include member responses to alcohol screening questions. The purpose of the system has been updated to reflect the fact the Coast Guard will use prevalence samples, an estimate of how common substance abuse is in the service.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/United States Coast Guard—020 Substance Abuse Prevention and Treatment Program System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget (OMB) and to Congress.

III. Health Insurance Portability and Accountability Act

This system of records contains individually identifiable health information. The Health Insurance Portability and Accountability Act of 1996, applies to most of such health information. Department of Defense 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

SYSTEM OF RECORDS

Department of Homeland Security (DHS)/USCG–020.

SYSTEM NAME:

DHS/USCG–020 Substance Abuse Prevention and Treatment Program.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the USCG Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include Coast Guard personnel, active duty and reserve receiving substance abuse screening, those receiving substance abuse treatment (inpatient or outpatient), and those requiring follow-up or aftercare substance abuse treatment services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Employee ID Number (EMPLID);
- Rate/Rank;
- History of substance abuse;
- Operation facility code;
- Treatment center;
- Diagnosis;
- Dates of treatment;
- Member responses to alcohol screening questions;
- Treatment records;
- Notes on aftercare; and
- Final disposition and type.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 7901; 14 U.S.C. 93(a)(17); 14 U.S.C. 632; 42 U.S.C. 4541; COMDTINST M6200.1A, Coast Guard Health Promotion Manual.

PURPOSE(S):

The purpose of this system is to administer the USCG Substance Abuse Prevention and Treatment program, including to identify alcohol and drug abusers within the USCG; to treat, counsel, and rehabilitate individuals who participate in the USCG Substance Abuse Program; as a management tool to identify trends, to understand through prevalence samples the impact on the service, to judge the magnitude of drug and alcohol abuse in the service; and to measure the effectiveness and efficacy of drug and alcohol prevention efforts in the USCG.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Note: For records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd-2. The routine uses set forth below do not apply to this information. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However,

access to the record by the individual to whom the record pertains is governed by the Privacy Act.

Note: For those records not described above, this system of records contains individually identifiable health information. The Health Insurance Portability and Accountability Act of 1996, applies to most of such health information. Department of Defense 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice. Therefore, routine uses outlined below may not apply to such health information.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where the DOJ or DHS has agreed to represent the employee; or

4. the U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of and with the consent of the individual to whom the record pertains in accordance with 42 U.S.C. 290dd–2(g).

C. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

E. To appropriate State and local authorities to report, under State law, incidents of suspected child abuse or neglect to the extent described under 42 CFR 2.12 and in accordance with 42 U.S.C. 290dd–2(e).

F. To any person or entity to the extent necessary to prevent an imminent and potential crime that directly threatens loss of life or serious bodily injury.

G. To report to appropriate authorities when an individual is potentially at risk to harm himself/herself or others.

H. To health care components of the Department of Veterans Affairs furnishing health care to veterans.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by individual name, EMPLID, or unit operation facility code.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individual who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records in this system are stored electronically in secure facilities behind a locked door. The records are stored on an electronic server. Military Substance abuse records are not scheduled. Records will be retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–11), United States Coast Guard Headquarters, 2100 2nd Street, SW., Stop 7902, Washington, DC 20593.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to Commandant (CG–11), United States Coast Guard Headquarters, 2100 2nd Street, SW., Stop 7902, Washington, DC 20593.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform to the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the USCG may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from personnel who submit to drug and alcohol testing, DHS and its components and offices, and testing and treatment facilities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: July 13, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–20229 Filed 8–9–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Employment Standards

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0006, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the requirement for airport and aircraft operators to maintain records of compliance with 49 CFR parts 1542 and 1544.

DATES: Send your comments by October 11, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0006; Employment Standards, 49 CFR parts 1542 and 1544. The purpose of this information collection is to determine compliance with 49 CFR parts 1542 and 1544. TSA requires that airport operators maintain records of criminal history records checks and security threat assessments in compliance with 49 CFR part 1542 and a related security directive for those employees with access privileges to security identification display areas of the airport. TSA also requires that aircraft operators maintain records of compliance with 49 CFR part 1544 for selected crew and security employees. TSA Transportation Security Inspectors (TSIs) review these records to ensure that the safety and security of the public is not compromised, to include using this information to take corrective action when necessary. These regulations establish procedures that airports and airlines must carry out to protect persons and property against acts of criminal violence, aircraft piracy, and terrorist activities. The current estimated annual recordkeeping burden is 35,898 hours.

Issued in Arlington, Virginia, on August 4, 2011.

Joanna Johnson,

Paperwork Reduction Act Officer, Business Improvements and Communications, Office of Information Technology.

[FR Doc. 2011–20252 Filed 8–9–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Airport Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0002, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. These programs require airport operators to maintain and update records to ensure compliance with security provisions outlined in 49 CFR part 1542.

DATES: Send your comments by October 11, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0002; Airport Security, 49 CFR part 1542. The information collected is used to determine compliance with 49 CFR part 1542 and to ensure passenger safety and security by monitoring airport operator security procedures. TSA is seeking to renew its OMB control number, 1652–

0002, Airport Security. TSA has implemented airport operator security standards at 49 CFR part 1542 to require each airport operator to which this part applies to adopt and carry out a security program. These TSA-approved security programs establish procedures that airport operators must carry out to protect persons and property traveling on flights provided by U.S. aircraft operators and foreign air carriers against acts of criminal violence, aircraft piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft.

This information collection is mandatory for airport operators. As part of their security programs, affected airport operators are required to maintain and update, as necessary, records of compliance with the security program provisions set forth in 49 CFR part 1542. This regulation also requires affected airport operators to make their security programs and associated records available for inspection and copying by TSA to ensure transportation security and regulatory compliance.

The information requested of airport operators has increased due to the security measures mandated by the Federal Government since September 11, 2001. The information TSA now collects includes identifying information on individuals with unescorted access to the most secured areas of the airport. Under this regulation, airport operators must ensure that individuals seeking unescorted access authority submit to and receive a criminal history records check (CHRC). As part of the CHRC process, the individual must provide identifying information, including fingerprints. Additionally, airport operators must maintain these records and make them available to TSA for inspection and copying upon request.

TSA will continue to collect information to determine airport operator compliance with other requirements of 49 CFR part 1542. TSA estimates that there will be approximately 444 airport operator respondents to the information requirements described above requiring approximately 535,705 hours per year to process.

The current estimated annual burden is 535,705 hours annually.

Issued in Arlington, Virginia, on August 4, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–20250 Filed 8–9–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Law Enforcement Officer Flying Armed Training

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0034, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden The collection involves the Federal Air Marshal Service (FAMS) maintenance of a database of all Federal, State and local law enforcement agencies that have received the Law Enforcement Officer (LEO) Flying Armed Training course.

DATES: Send your comments by October 11, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0034; Law Enforcement Officer (LEO) Flying Armed Training. TSA is requesting approval for the renewal of the collection of this information to comply with 49 CFR 1544.219, which requires Federal LEOs or full-time territorial, tribal, municipal, county or state LEOs who are direct employees of government agencies, or authorized railroad police officers, to complete the LEO Flying Armed training course in order to fly armed. The course is a non-tactical overview of the conditions under which an officer may fly armed and the required conduct and duties of the LEO while flying armed. This collection would permit TSA to collect identifying information from law enforcement agencies requesting the LEO Flying Armed training course.

Information will be gathered from law enforcement agencies who have requested the LEO Flying Armed training course. The information would be gathered to confirm that the agencies are eligible for this program (*i.e.*, that they are active law enforcement agencies whose officers have an operational need to fly armed). Law enforcement agencies will be required to contact the TSA/FAMS via phone or e-mail and provide the full name of the agency's designated point of contact, agency name, and agency address, telephone number, and e-mail address to obtain the LEO Flying Armed training course. The FAMS will maintain a record of law enforcement agencies and their point of contact that have received the training materials. If an issue arises during the screening and verification process regarding the authenticity of an agency that requests training materials, no training materials will be supplied until that issue has either been confirmed or resolved and a record of such will be maintained.

Upon completion of the training, the LEO who has been authorized by his or her agency to fly armed will present his or her credentials, and other required documentation at the airport in order to fly armed. A Transportation Security Officer will verify all pertinent information onsite. TSA estimates there will be approximately 2,000 respondents on an annual basis, for a total annual hour burden of 167 hours.

Issued in Arlington, Virginia, on August 4, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–20259 Filed 8–9–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Class III Gaming Compact taking effect.

SUMMARY: This publishes notice of the Tribal-State Compact between the State of California and the Habematolel Pomo of Upper Lake taking effect.

DATES: Effective Date: August 10, 2011.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Compact allows for one gaming facility and authorizes up to 750 gaming devices, any banking or percentage card games, and any devices or games authorized under state law to the state lottery. The Compact, also, authorizes limited annual payments to the State for statewide exclusivity. Finally, the term of the compact is until December 31, 2031. This Compact is considered to have been approved but only to the extent that the Compact is consistent with the provisions of the Indian Gaming Regulatory Act.

Dated: August 3, 2011.

Jodi Gillette,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2011–20316 Filed 8–9–11; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes an extension of the Tribal-State gaming compact between the Oglala Sioux Tribe and the State of South Dakota.

DATES: *Effective Date:* August 10, 2011.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This amendment allows for the extension of the current Tribal-State Class III gaming compact between the Oglala Sioux Tribe and the State of South Dakota until December 31, 2011.

Dated: August 2, 2011.

Donald E. Laverdure,

Principal Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 2011–20273 Filed 8–9–11; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Clean Water Act

Notice is hereby given that on August 4, 2011, a proposed Consent Decree in *United States, State of Missouri, and the Missouri Coalition for the Environment Foundation* v. *Metropolitan St. Louis Sewer District,* No. 4:07–CV–01120, was lodged with the United States District Court for the Eastern District of Missouri.

In this action the United States sought civil penalties and injunctive relief for violations of the Clean Water Act (''CWA''), 33 U.S.C. 1251, *et seq.,* in connection with the Metropolitan St. Louis Sewer District's (''MSD's'') operation of its sewer system in the City of St. Louis and St. Louis County, Missouri. The Complaint alleged that MSD's discharges of raw sewage from its sanitary sewer system—discharges that often are referred to as Sanitary Sewer Overflows or ''SSOs''—and from MSD's combined storm water and sanitary sewer system—discharges that often are referred to as Combined Sewer Overflows or ''CSOs''—violate MSD's National Pollutant Discharge Elimination System (''NPDES'') permits and Section 301 of the CWA, 33 U.S.C. 1311. The Complaint also alleged that the chronic and repeated backups of raw sewage into homes, yards, playgrounds, parks, and streets from MSD's sewer system pose an ''imminent and substantial endangerment'' to human health under Section 504(a) of the CWA 33 U.S.C. 1364(a). The Missouri Coalition for the Environment Foundation moved to intervene as a co-plaintiff in the federal action, and when its motion was granted by the Court, filed its Complaint in Intervention, alleging similar CWA claims against MSD.

The proposed Consent Decree will resolve the United States' CWA claims. Under the proposed Consent Decree, MSD will be required to implement comprehensive injunctive relief to expand and rehabilitate both its combined sewer system and its sanitary sewer system to reduce or eliminate unlawful SSOs and CSOs into various rivers and streams, as well as discharges to basements and from manholes or other discharge points in the St. Louis area. This injunctive relief will be performed over a 23-year period at a project cost of $4.7 billion. MSD will pay a total civil penalty of $1.2 million to the United States, and spend $1.6 million to carry out a program that will enable low income residents to elect to close their septic tanks and connect to the public sewer or to replace leaking private sewer lines. The consent decree also contains provisions pertaining to the claims of the Missouri Coalition for the Environment Foundation against MSD. The proposed Consent Decree has been signed by the United States, the Missouri Coalition for the Environment Foundation, and MSD.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. The comments should refer to *United States, et al.* v. *Metropolitan St. Louis Sewer District,* D.J. Ref. 90–5–1–1–08111.

During the public comment period, the proposed Consent Decree may be examined on the Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree may be obtained by mailing a request to the Consent Decree Library, P.O. Box 7611,

U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy by mail, please enclose a check payable to the U.S. Treasury in the amount of $29.25 (25 cents per page reproduction cost). A copy may also be obtained by e-mailing or faxing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* fax number (202) 514–0097, phone confirmation number (202) 514–1547, and mailing a check for the reproduction cost to the Consent Decree Library.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–20321 Filed 8–9–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jose Gonzalo Zavaleta, M.D.; Denial of Application

On February 23, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause (Order) to Jose Gonzalo Zavaleta, M.D. (Applicant), of Pineville, Louisiana. The Order proposed the denial of Applicant's pending application for a DEA Certificate of Registration as a practitioner, on the ground that his registration would be ''inconsistent with the public interest.'' Order at 1 (citing 21 U.S.C. 823(f)).

The Order alleged that Applicant voluntarily surrendered his DEA Certificate of Registration, BZ5998250, on March 26, 2008, after being charged with six counts of prescribing controlled substances beyond authority and accepted medical treatment, in violation of La. Rev. Stat. Ann. § 40:971 (C)(1)(2008) (effective Aug. 15, 2006). *Id.* The Order further alleged that Applicant prescribed controlled substances to undercover agents with ''cursory or no medical examinations, and without a legitimate medical purpose in violation of 21 U.S.C. 841(a)(1).'' *Id.* More specifically, the Order alleged that Applicant prescribed a total of 75 dosage units of hydrocodone (including Lortab and/or Lorcet), which are schedule III narcotics; 20 dosage units of Xanax, a schedule IV controlled substance; and six ounces of Phenergan with codeine, a schedule V narcotic cough syrup. *Id.* Finally, the Order that alleged ''[Applicant] facilitated the undercover officers' procurement of drugs by fraudulent means'' when he advised them to ''provide false medical information'' to justify ''illegitimate prescriptions.'' *Id.* at 2.

On March 2, 2009, the Order, which also notified Applicant of his right to either request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for doing so, and the consequence if he failed to do so, was served on Applicant by certified mail addressed to him at the address listed on his application. *Id.* at 2 (citing 21 CFR 1316.47; 21 CFR 1301.43). Since service of the Order, more than thirty days have now passed and neither Applicant, nor anyone purporting to represent him, has either requested a hearing or submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(b)–(d). Accordingly, I find that Applicant has waived his rights to a hearing or to submit a written statement. *Id.* 1301.43(d). I therefore issue this Decision and Final Order without a hearing based on relevant material contained in the investigative record submitted by the Government. I make the following findings.

Findings

Applicant was previously the holder of DEA Certificate of Registration, BZ5998250, which authorized him to dispense controlled substances in schedules II through V as a practitioner at the registered location of 5629 Jackson Street Ext, Alexandria, Louisiana. Affidavit of Diversion Investigator (hereinafter, DI Aff.), at 1; Applicant Registration Information, at 1. However, on March 26, 2008, concurrent with Applicant's arrest on state drug charges (the circumstances of which are set forth below), he voluntarily surrendered his registration. DI Aff., at 1. Applicant's registration was then retired by DEA on March 27, 2008. Applicant Registration Information, at 1. On July 28, 2008, Applicant applied for a new DEA registration as a practitioner in schedules IV and V. *Id.*

Applicant first came to the attention of law enforcement on January 17, 2008, when Louisiana State Police received a call from a pharmacist that he had authorized prescriptions for ''excessive amounts of name brand narcotics with no generic substitutions allowed.'' DI Aff., at 2. Upon receipt of this information, an undercover state trooper (UC1) visited Applicant's clinic with audio/video recording equipment on January 23, 2008. *Id.* When Applicant asked UC1 ''why he was there,'' UC1 responded by requesting ''[h]ydrocodone pain pills.'' *Id.* UC1 ''initially denied that he was in pain but, after negotiating with [Applicant], he agreed to falsely state that he was suffering from a sexually transmitted disease,'' and Applicant recorded this false information in UC1's medical file. *Id.* Then, Applicant, without any physical examination to verify the claim of illness or symptoms, wrote prescriptions for 15 Lortab [1] pills and an antibiotic. *Id.* The undercover agent paid $100 for the visit. *Id.*

Five days later, on January 28, 2008, UC1 returned to Applicant's clinic seeking additional ''pain pills.'' *Id.* However, Applicant denied his request for more pain pills ''because 'big brother' was watching him.'' *Id.*

Thereafter, on January 30, February 8, and February 28, 2008, a second state trooper (UC2) visited Applicant's clinic in an undercover capacity, while equipped with an audio/video recording device. *Id.* At UC2's first visit, Applicant issued her a prescription for hydrocodone,[2] notwithstanding UC2's ''initially den[ying] she was in pain'' and ''later stat[ing] she was in pain in order to obtain a prescription for hydrocodone.'' *Id.* At her second visit on February 8, Applicant provided prescriptions for hydrocodone and Phenergan with codeine,[3] the latter being a cough syrup, ''even though she had no cough or congestion and exhibited no such symptoms.'' *Id.* On UC2's third visit, she requested and obtained from Applicant, prescriptions for hydrocodone and Xanax.[4] *Id.* To justify issuing the prescriptions, Applicant ''coached'' UC2 about what to say and recorded the coached statements in her medical file. *Id.* At the undercover visits, Applicant never ''require[d] any medical records nor did he conduct any physical examinations.'' *Id.*

On March 20, 2008, after a state court judge issued a warrant for Applicant's arrest, Louisiana State Police alerted DEA to the investigation and pending arrest. *Id.* Thereafter, on March 26, 2008, Applicant was arrested and charged with ''six counts of prescribing beyond authority and accepted medical treatment, a violation of Louisiana Revised Statute 40:971C(1).'' *Id.* at 3. Based on Applicant's arrest, a DEA Diversion Investigator asked for the voluntary surrender of his DEA

[1] Lortab, which is a combination drug containing hydrocodone and acetaminophen, is a schedule III controlled substance. 21 CFR 1308.13(e)(iv).

[2] Hydrocodone is typically combined with acetaminophen. In this formulation, it is a schedule III controlled substance. 21 CFR 1308.13(e)(iv).

[3] Phenergan with codeine cough syrup consists of a combination of promethazine and codeine; it is a schedule V controlled substance. 21 CFR 1308.15(c).

[4] Xanax (alprazolam) is a schedule IV controlled substance; 21 CFR 1308.14(c)(1).

registration; Applicant agreed and signed a DEA–104, Voluntary Surrender of Controlled Substance Privileges. *Id.*

Four months later, on July 28, 2008, Applicant submitted a DEA application for a new registration as a practitioner in schedules IV and V. Zavaleta Application Information at 1. On his application, Applicant stated that ''the medical board says there is no merit for any disciplinary action,'' he ''can continue working,'' and his ''license is clear.'' *Id.* Applicant further stated that the State Police had yet to charge him and that the charges may be dropped. *Id.*

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that an application for a practitioner's registration may be denied upon a determination ''that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination in the case of a practitioner, Congress directed that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are considered in the disjunctive.'' *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether * * * to deny an application. *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005) (citing *Morall* v. *DEA,* 412 F.3d 165, 173–74 (DC Cir. 2005)).

In this matter, while I have considered all of the factors, I conclude that it is not necessary to make findings with respect to factors one (the recommendation of the state licensing board), three (applicant's conviction record) and five (such other conduct which may threaten public health and safety). I find that the Government's evidence with respect to Applicant's experience in dispensing controlled substances (factor two) and his compliance with applicable Federal and State laws related to the distribution and dispensing of controlled substances (factor four) makes out a *prima facie* case that Applicant has committed acts which render his registration ''inconsistent with the public interest.'' 21 U.S.C. 823(f), 824(a)(4). I will therefore order that his pending application for registration be denied.

Factors Two and Four—Applicant's Experience in Dispensing Controlled Substances and Compliance with Applicable Laws Related to Controlled Substances

Under a longstanding DEA regulation, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.'' *Id.; see also* La. Rev. Stat. Ann. § 40:961(33) (2008) (effective Aug. 15, 2004); [5] La. Rev. Stat. Ann. § 40:1238.2(A) (2008) (effective Aug. 15, 2006).[6]

As the Supreme Court recently explained, ''the [CSA's] prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)); *see also* La. Rev. Stat. Ann. § 40:1238.2(A) (2008) (effective Aug. 15, 2006).

Under the CSA, it is fundamental that a practitioner must establish and maintain a bonafide doctor-patient relationship in order to act ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *Laurence T. McKinney,* 73 FR 43260, 43265 n.22 (2008); *see also Moore,* 423 U.S. at 142–43 (noting that evidence established that physician ''exceeded the bounds of 'professional practice,' '' when ''he gave inadequate physical examinations or none at all,'' ''ignored the results of the tests he did make,'' and ''took no precautions against * * * misuse and diversion''). The CSA generally looks to state law to determine whether a doctor and patient have established a bonafide doctor-patient relationship. *See Kamir Garces-Mejias,* 72 FR 54931, 54935 (2007); *United Prescription Services, Inc.,* 72 FR 50397, 50407 (2007); *but see* 21 U.S.C. 829(e)(2)(B) (providing Federal standard for prescribing over the Internet).

Under the regulation of the Louisiana Board of Medical Examiners, in the treatment of ''intractable pain * * * a physician shall comply'' with the Louisiana Pain Rules, including the requirements that a physician perform an ''[e]valuation of the [p]atient'' and make a ''[m]edical [d]iagnosis.'' La. Admin. Code tit. 46:XLV.6921(A) (2008). ''Evaluation of the patient shall initially include relevant medical, pain, alcohol and substance abuse histories, an assessment of the impact of pain on the patient's physical and psychological functions, a review of previous diagnostics studies, previously utilized therapies, an assessment of coexisting illnesses, diseases, or conditions, and an *appropriate physical examination.'' Id.* (emphasis added); *see also Armstrong* v. *La. State Bd. of Med. Examiners,* 868 So. 2d 830, 840 (La.App. 4 Cir. Feb. 18, 2004) (upholding two year suspension of physician's license; noting that when prescribing controlled substances for relief of non-malignant pain is '' unaccompanied by appropriate testing, diagnosis, oversight and monitoring * * * the physician falls below generally accepted standards of care''); *Pastorek* v. *La. State Bd. of Med. Examiners,* 4 So. 3d 833 (La.App. 4 Cir. Dec. 17, 2008). The Board's rules further require a ''medical diagnosis * * * be established and fully documented in the patient's medical record.'' La. Admin. Code tit. 46:XLV.6921(A)(2) (2008).

Louisiana law further prohibits a physician from ''[a]ssist[ing] a patient or any other person in obtaining a controlled dangerous substance through

[5] Louisiana law defines the term ''prescription'' to mean ''a written request for a drug * * * issued by a licensed physician * * * for a legitimate medical purpose, for the purpose of correcting a physical, mental, or bodily ailment, and acting in good faith in the usual course of his professional practice.'' La. Rev. Stat. Ann. § 40.961(33).

[6] This statute provides that:

A prescription, in order to be effective in legalizing the possession of legend drugs, shall be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. An order purporting to be a prescription issued to a drug abuser or habitual user of legend drugs, not in the course of professional treatment, is not a prescription within the meaning and intent of this Section. Any person who knows or should know that he or she is filling such a prescription or order to a drug abuser or habitual user of legend drugs, as well as the person issuing the prescription, may be charged with a violation of this Section.

La. Rev. Stat. Ann. § 40:1238.2(A).

misrepresentation, fraud, forgery, deception, or subterfuge.'' La. Rev. Stat. Ann. § 40:971.2 (2008) (effective Aug. 15, 2005). It is also unlawful for a physician to ''prescribe * * * legally controlled substances beyond his respective prescribing authority or for a purpose other than accepted medical treatment of disease, condition, or illness. *Id.,* at § 40:971(C)(1) (2008) (effective Sept. 9, 1988).

As found above, on four occasions, Applicant prescribed drugs containing hydrocodone (including Lortab and/or Lorcet), which are schedule III narcotics; Xanax, a schedule IV controlled substance; and Phenergan with codeine, a schedule V narcotic cough syrup, to Louisiana State Troopers acting in undercover capacities. *See* DI Aff., at 2. Notably, Applicant issued these prescriptions without conducting a physical examination at any of the visits and the undercover agents received these prescriptions even though they did not demonstrate the conditions or symptoms that would justify the prescriptions. *Id.*

Moreover, both undercover agents initially denied they were in pain, but Applicant assisted the agents in obtaining controlled substances by encouraging them to make false statements. *See id.* For example, while he denied being in pain, UC1 asked Applicant for ''[h]ydrocodone pain pills,'' and then ''negotiate[ed]'' with Applicant to ''falsely state'' he had a sexually transmitted disease. *Id.* Likewise, Applicant also ''coached'' the second undercover agent on what to say to ''justify issuing the prescriptions and wrote her coached statements in a medical file.'' *Id.* Therefore, I conclude that Applicant failed to establish a physician-patient relationship, lacked a legitimate medical purpose, and acted outside of the usual course of professional practice in prescribing controlled substances to the undercover agents and thus violated Federal law. *See* 21 CFR 1306.04(a); 21 U.S.C. 841(a)(1); *see also Louisiana* v. *Moody,* 393 So. 2d 1212, 1215 (La. 1981) (holding that physician furnished prescriptions for ''other than a legitimate medical purpose'' based on evidence showing that prescriptions were issued in response to specific requests of patients and physician did not conduct physical examinations or take medical histories).

I therefore hold that granting Applicant's application for a new registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f). Accordingly, I will order that Applicant's pending application be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I order that the application of Jose Gonzalo Zavaleta, M.D., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective September 9, 2011.

Dated: July 27, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–20284 Filed 8–9–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of Disability Employment Program

''Add Us In'' Initiative

AGENCY: Office of Disability Employment Policy, Department of Labor.

ACTION: Correction to the Funding Opportunity Number and Closing Date.

SUMMARY: The Office of Disability Employment Policy, Department of Labor is correcting the New Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Cooperative Agreements published in the **Federal Register** on August 4, 2011 at 76 FR 150. Specifically, we are correcting the Funding Opportunity Number to SGA 11–05 and the Closing Date for receipt of applications to September 2, 2011. The full Solicitation for Grant Applications is posted on *http://www.grants.gov* under U.S. Department of Labor/ODEP. If you need to speak to a person concerning these grants, you may telephone Cassandra Mitchell at 202–693–4570 (not a toll-free number).

Signed in Washington, DC, this 4th day of August 2011.

Cassandra R. Mitchell,

Grant Officer.

[FR Doc. 2011–20211 Filed 8–9–11; 8:45 am]

BILLING CODE 4510–FT–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 11–073]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Wednesday, August 31, 1 p.m. to 3 p.m. E.D.T.

ADDRESSES: This meeting will take place telephonically. Any interested person may call the USA toll free conference call number 888–603–9610, pass code ESS, to participate in this meeting by telephone.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Government Performance and Results Act Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

August 5, 2011.

Susan M. Burch,

Acting Director, Advisory Committee Management Division, National Aeronautics and Space Administration.

[FR Doc. 2011–20275 Filed 8–9–11; 8:45 am]

BILLING CODE 7510–13–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 September 9, 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 (N1–545–08–12, 8 items, 8 temporary items). Records of the Departmental Initiatives and International Affairs division, including records created in investigating international complaints and data and material created to contribute to larger government- or department-wide initiatives, external collaborative projects, and outreach programs.

2. Department of Agriculture, Risk Management Agency (N1–258–09–3, 1 item, 1 temporary item). Good Farming Practice Documentation, including producer documentation, request letters, company claims files, and expert opinions used to allow producers to seek reconsideration of adverse good farming practice determinations.

3. Department of Agriculture, Risk Management Agency (N1–258–09–4, 1 item, 1 temporary item). Records of large claims reviews including claims review request letters, company claim files, and expert opinions.

4. Department of the Army, Agency-wide (N1–AU–10–50,1 item, 1 temporary item). Master files of an electronic information system used to track information on Equal Employment Opportunity discrimination complaint cases.

5. Department of Commerce, Bureau of Economic Analysis (N1–375–10–5, 14 items, 12 temporary items). Records related to economic statistics including general correspondence, methodologies, intermediary economic data, initial estimates of Federal expenditures, state and local government financial and labor data, and supporting documents including drafts and reference material used to generate final products. Proposed for permanent retention are official publications, speeches, and final reports.

6. Department of Commerce, International Trade Administration (N1–489–10–1, 22 items, 19 temporary items). Records relating to the chief information office, including web site content records, transaction files, background files, non-case specific briefing materials, legislation files, negotiation files, review files, unfair trade practices files, and administrative files. Proposed for permanent retention are eGov Official Managing Partner

records, President's Export Council Program files, and President's Export Council Official Recommendations and Reports.

7. Department of Health and Human Services, Administration for Children and Families (N1–292–10–3, 10 items, 10 temporary items). Master files and outputs of electronic information systems used to provide employment and location information to state and Federal officials for use in child support enforcement activities.

8. Department of Health and Human Services, Centers for Medicare & Medicaid Services (N1–440–09–10, 5 items, 3 temporary items). Master files of electronic information systems containing information on Medicare and Medicaid program enrollment and utilization data for beneficiaries enrolled in hospital insurance or medical insurance. Also included are surveys and financial expenditure reports. Proposed for permanent retention are a sampling of standard analytical files created annually for claims closed that fiscal year.

9. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–11–1, 2 items, 2 temporary items). Master files of an electronic information system containing reports to headquarters on significant security incidents such as violations of laws or regulations including loss, theft, or damage to government property or information and disruptions such as fire alarms, loss of utilities, and evacuations.

10. Department of Homeland Security, Secret Service (N1–87–11–6, 1 item, 1 temporary item). Master files of an electronic information system containing digital photographs used for inspecting the undercarriages of vehicles.

11. Department of Justice, Federal Bureau of Investigation (N1–65–10–24, 7 items, 6 temporary items). Records relating to security risk assessments, including case files for individuals and entities and related tracking systems. Proposed for permanent retention are assessment policy files.

12. Department of Justice, Federal Bureau of Investigation (N1–65–11–22, 4 items, 2 temporary items). Miscellaneous non-subversive administrative records and routine case files. Proposed for permanent retention are policy files and significant case files.

13. Department of State, Bureau of Diplomatic Security (N1–59–11–14, 5 items, 5 temporary items). Records of the Office of the Chief Financial Officer, including routine budget correspondence, apportionments, allotments, reimbursements, and miscellaneous obligations files.

14. Department of the Treasury, Internal Revenue Service (N1–58–09–80, 3 items, 3 temporary items). Master files and system documentation of an electronic information system used to share reference information related to criminal investigations.

15. Department of the Treasury, Internal Revenue Service (N1–58–09–84, 13 items, 13 temporary items). Master files, outputs, and system documentation of an electronic information system used to access taxpayer information for tax processing.

16. Department of the Treasury, Internal Revenue Service (N1–58–10–6, 7 items, 7 temporary items). Master files, inputs, and system documentation of an electronic information system used to track the status of criminal investigations.

17. Department of the Treasury, Internal Revenue Service (N1–58–10–8, 35 items, 35 temporary items). Records of the Taxpayer Advocate Division including non-significant case files, customer satisfaction survey reports, grant case files, trip files, and administrative files.

18. Architectural and Transportation Barriers Compliance Board, also known as the Access Board, Agency-wide (N1–588–11–1, 18 items, 9 temporary items). Background materials to rulemaking files, directives, and other substantive agency issuances; compliance and complaints case files; web site records including content maintained in other recordkeeping files; and other facilitative records. Proposed for permanent retention are official board records, rulemaking files, and other substantive records documenting basic program management functions.

19. Environmental Protection Agency, Gulf Coast Ecosystem Restoration Task Force (N1–220–11–1, 5 items, 4 temporary items). Files relating to Task Force activities not containing unique information of historical value; web site records, including electronic versions of web sites, web site design, management, and technical operation records; and electronic versions of content records duplicated in paper Task Force records. Proposed for permanent retention are files documenting the Task Force's establishment, membership, policy, organization, deliberations, findings, and recommendations.

20. Farm Credit Administration, Agency-wide (N1–103–11–1, 19 items, 12 temporary items). Records include general correspondence, non-substantive drafts and background materials, administrative program operation records, and guidance and office records. Proposed for permanent retention are program records documenting mission-related activities including decisions made by the agency board, public and congressional communications, financial data, public rulemaking files, charters and by-laws, legal opinions, and litigation records.

21. Office of the Director of National Intelligence, Office of Policy, Plans, and Requirements (N1–576–09–5, 28 items, 9 temporary items). Records relating to policy development, strategic planning, and security requirements for the intelligence community, including internal briefings, staff level committees, web records, non-substantive working papers and drafts, and reference files. Proposed for permanent retention are senior level correspondence, program and policy files, security standards reports, emergency planning records, strategic planning records, external briefings, and substantive working papers and drafts.

22. United States Patent and Trademark Office, Office of the Chief Information Officer (N1–241–10–1, 26 items, 24 temporary items). Records related to patent granting and maintenance including abandoned patent applications, preliminary examination working files, records related to foreign patent application granting, quality review files, legal records including correspondence and policy comments, patent examiner training records, and other administrative records that support the patent granting process. Proposed for permanent retention are patent program and policy subject files that document procedures, projects, and management decisions and the granted patent case files.

Dated: August 3, 2011.

Julie H. Reaves,

Acting Chief Records Officer for the U.S. Government.

[FR Doc. 2011–20410 Filed 8–9–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal

agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection on grant applicant satisfaction with application guidance and materials provided on the NEA Web site and by NEA staff. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before October 8, 2011. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Sunil Iyengar, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5424 (this is not a toll-free number), fax (202) 682–5677.

Kathleen Edwards,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 2011–20255 Filed 8–9–11; 8:45 am]

BILLING CODE 7537–01–P

POSTAL REGULATORY COMMISSION

[Docket No. N2011–1; Order No. 778]

Postal Service Initiative on Retail Postal Locations

AGENCY: Postal Regulatory Commission.

ACTION: Notice; correction.

SUMMARY: The Postal Regulatory Commission published a notice in the **Federal Register** of August 4, 2011 concerning a Postal Service request for an advisory opinion on an initiative involving examination of the continuation of service at postal retail locations. The procedural schedule included an incorrect date for the close of discovery on the Postal Service's direct case.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

Correction

In the **Federal Register** of August 4, 2011, FR Doc. 2011–19725, on page 47276, in the Procedural Schedule table appearing after the signature block, correct the second line in the left-hand column to read:

August 30, 2011	Close of discovery on Postal Service direct case.

Dated: August 4, 2011.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–20196 Filed 8–9–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65032; File No. SR–NSCC–2011–04]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Rules Relating To Discontinuing Dividend Settlement Service, Funds Only Settlement Service, Data Distribution Box Services, and Changes to the Envelope Settlement Service

August 4, 2011.

I. Introduction

On June 15, 2011, The National Securities Clearing Corporation (''NSCC'') filed proposed rule change SR–NSCC–2011–04 with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on July 6, 2011.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

As operated prior to this rule change, the Dividend Settlement Service (''DSS''), the Funds Only Settlement Service (''FOSS''), and the Envelope Settlement Service (''ESS'') were non-guaranteed services of NSCC through which NSCC members were able to exchange physical envelopes through a centralized location at NSCC. Pursuant to Rule 43 of NSCC's Rules and Procedures, DSS centralized claims processing for collection and payment of dividends and interest between NSCC members through the exchange of envelopes through the facilities of NSCC. Pursuant to Rule 41 of NSCC's Rules and Procedures, FOSS centralized money-only settlements for NSCC members through the exchange of paperwork delivered to and received by NSCC members through NSCC's facilities.[3] Pursuant to Rule 9 and Addendum D of NSCC's Rules and Procedures, ESS allowed an NSCC member to physically deliver a sealed envelope containing securities and such other items as NSCC from time to time permitted to a specified NSCC member. The money settlement associated with ESS, DSS, and FOSS transactions occurred through NSCC's end-of-day settlement process.

A. Consolidation and Elimination of Certain Services

The use of each of these services has steadily declined in recent years due to increased dematerialization of securities and automation of transaction processing. In light of this decline and the elimination of the guaranty of ESS transactions, NSCC is amending its rules to discontinue the separate DSS and FOSS services and to allow members to

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 64769 (June 29, 2011), 76 FR 39463 (July 6, 2011).

[3] FOSS was created in 1983 to remove money-only settlement activity, which prior to that time was included in ESS, from ESS in order to facilitate what was then NSCC's guaranty of settlement of securities transactions processed through ESS. The guaranty of ESS settlement was in effect from 1983 until 2010. Exchange Act Release No. 61618 (March 1, 2010) (File No. SR–NSCC–2010–01), 75 FR 10542 (March 8, 2010).

process dividends and funds-only settlement activities through ESS.[4]

In addition, NSCC will amend its rules to discontinue its Data Distribution Box Service (''DDBS''). DDBS was traditionally used to distribute hard copy Important Notices, clearing reports, and other informational documents to NSCC members. Today members: (a) Receive Important Notices through the Web site of NSCC's parent, The Depository Trust & Clearing Corporation, at *http://www.dtcc.com,* (b) receive clearing reports through electronic communications, and (c) exchange other information that previously might have been transferred through DDBS, by use of e-mail, facsimile transmission, courier services, the U.S. Postal Service, and other delivery mechanisms. The DDBS service has become obsolete as a result of the use of these other more efficient means of distribution and therefore will be eliminated.

B. ESS Processing Changes

NSCC performs certain regulatory tracking, monitoring, and reporting functions (*e.g.,* OFAC screening) for securities transactions processed through NSCC. With respect to some NSCC services, such as Continuous Net Settlement (''CNS''),[5] NSCC electronically receives information about security identification and transaction size that facilitates such tracking and reporting. However, similar electronic information is not available for securities transferred through ESS. In order to facilitate NSCC's tracking, monitoring, and reporting, the rule change will allow NSCC (1) To require its members to provide a security identifier (*i.e.,* CUSIP or ISIN) and to include quantity delivered for all securities delivered through ESS, (2) to restrict members to one security issue per envelope, and (3) to prohibit the comingling of securities with other items. The rule change will also allow NSCC to require its members to provide it with additional information that NSCC from time to time deems necessary to facilitate ESS processing.

Additionally, the rule change will also allow for automatic updates to NSCC's Obligation Warehouse service with respect to securities transactions that settle though ESS where the delivering member includes an Obligation Warehouse control number with the respective envelope delivery to ESS. However, this feature will not be implemented concurrently with the other changes described in this approval order but instead will be implemented through announcement by Important Notice at a later date.[6]

Pursuant to this rule change, NSCC's rules will be updated to change references to ESS deliveries and receives occurring through NSCC's New York City facility to use general language allowing NSCC to provide this service through any NSCC facility as announced by Important Notice. As mentioned above, the rule change will also require that members not comingle different issues of securities in the same envelope or with other activity conducted through ESS. Accordingly, NSCC will also be allowed to prohibit comingling between funds-only and dividend settlement items.

C. Fee Structure

NSCC's Fee Schedule will be revised to delete charges for the discontinued services mentioned above. Under the rule change, all services offered under the newly combined ESS will be subject to the existing ESS charge for deliveries and receives.[7]

D. Addendum D—Statement of Policy—Envelope Settlement Service, Mutual Fund Services, Insurance and Retirement Processing and Other Services Offered by the Corporation

Addendum D, a statement of policy with regard to ESS and other NSCC services, provides, among other things, that money-only settlement charges should not be processed through ESS. NSCC will amend Addendum D to conform to the changes approved pursuant to this rule change. The revised Addendum D will also include a technical change that clarifies that NSCC may reverse a member's debits or credits that are related to the Commission Bill Service.

E. Implementation Date

The implementation date for the approved rule changes will be announced by Important Notice; however, the elimination of DDBS will not take effect until approximately, but no less than, 30 days from the date of this approval order.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[8] The Commission finds that NSCC's rule change should facilitate the prompt and accurate clearance and settlement of securities transactions by increasing processing efficiencies through the merger of several similar services for physical processing and by eliminating obsolete services.

Accordingly, for the reasons stated above the Commission believes that the proposed rule change is consistent with NSCC's obligation under Section 17A of the Exchange Act, as amended, and the rules and regulations thereunder.[9]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2011–04) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20241 Filed 8–9–11; 8:45 am]

BILLING CODE 8011–01–P

[4] In order to distinguish securities transfers from other ESS activity, NSCC is adding a required indicator for input by members to disclose whether or not a security is included in an envelope.

[5] CNS is an automated accounting system operated by NSCC which nets today's settling trades with yesterday's closing positions in eligible securities to produce new short or long settlement positions per security issue for each NSCC member.

[6] For information on the Obligation Warehouse service, see Exchange Act Release No. 63588 (December 21, 2010), 75 FR 82112 (December 29, 2010) (File No. SR–NSCC–2010–11).

[7] In addition, two separate line items relating to ESS fees will be consolidated into one to reflect that the combined fee applies to all ESS deliveries and receives (including intercity). Also, as a technical change, fees relating to the New York Window Service will be deleted from the Fee Schedule since that service is no longer being offered by NSCC and certain other fees relating to physical processing functions that have become obsolete (which appear in the Fee Schedule as items A through F under the heading ''Other Service Fees'') will also be deleted. For additional information on the discontinuation of the New York Window Service at NSCC, see Exchange Act Release No. 40179 (July 8, 1998), 63 FR 38221 (July 15, 1998) (File Nos. SR–DTC–98–09, SR–NSCC–98–05).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65034; File No. SR–NYSE–2011–38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Sections 102.01 and 103.01 of the Exchange's Listed Company Manual To Adopt Additional Listing Requirements for Companies Applying To List After Consummation of a ''Reverse Merger'' With a Shell Company

August 4, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 22, 2011, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 102.01 and 103.01 of the Exchange's Listed Company Manual (the ''Manual'') to adopt additional initial listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE proposes to adopt more stringent listing requirements for operating companies that become Exchange Act reporting companies by combining with a shell company which is an Exchange Act reporting company. The proposed listing requirements would apply to combinations with a shell company which is an Exchange Act reporting company, through a reverse merger, exchange offer or otherwise (a ''reverse merger transaction'').

In a reverse merger transaction, an existing public shell company merges with a private operating company in a transaction in which the shell company is the surviving legal entity.[4] While the public shell company survives the merger, the shareholders of the private operating company typically hold a large majority of the shares of the public company after the merger and the management and board of the private company will assume those roles in the post-merger public company. The assets and business operations of the post-merger surviving public company are primarily, if not solely, those of the former private operating company. The Exchange understands that private operating companies generally enter into reverse merger transactions to enable the company and its shareholders to sell shares in the public equity markets. By becoming a public reporting company via a reverse merger, a private operating company can access the public markets quickly and avoid the generally more expensive and lengthy process of going public by way of an initial public offering. While the public shell company is required to report the reverse merger in a Form 8–K filing with the Securities and Exchange Commission (the ''Commission''), generally there are no registration requirements under the Securities Act of 1933 (the ''Securities Act'') [5] at that point in time, as there would be for an IPO.

Significant regulatory concerns, including accounting fraud allegations, have arisen with respect to a number of reverse merger companies in recent times. The Commission has taken direct action against reverse merger companies. During 2011, the Commission has suspended trading in the securities of a number of reverse merger companies and has revoked the securities registration of a number of reverse merger companies.[6] The Commission also recently brought an enforcement proceeding against an audit firm relating to its work for reverse merger companies.[7] In addition, the Commission issued a bulletin on the risks of investing in reverse merger companies, noting potential market and regulatory risks related to investing in reverse merger companies.[8]

In response to these concerns, NYSE Regulation staff has been conducting heightened, risk-informed reviews of reverse merger companies seeking to list on the NYSE or NYSE Amex to consider factors other than the enumerated initial listing criteria in making listing determinations. In this regard, Section 101.00 of the Manual provides that the Exchange has ''broad discretion regarding the listing of a company.'' Section 101.00 provides that the Exchange may use such discretion to ''deny listing or apply additional or more stringent criteria based on any event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange.'' The Exchange may use this discretionary authority to increase the stringency of its stated listing criteria but not to decrease their stringency.

In light of the well-documented concerns related to some reverse merger companies as described above, the Exchange believes it is appropriate to codify in its rules specific requirements with respect to the initial listing qualification of reverse merger companies. As proposed, a reverse merger company would not be eligible for listing unless the combined entity had, immediately preceding the filing of the initial listing application:

(1) Traded for at least one year in the U.S. over-the-counter market, on another national securities exchange or on a regulated foreign exchange following the consummation of the reverse merger and (i) In the case of a domestic issuer, filed with the Commission a Form 8–K including all of the information required by Item 2.01(f) of Form 8–K, including all required audited financial statements, or (ii) in the case of a foreign private issuer, filed the information described in (i) above on Form 20–F;

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In some cases a private company effects an exchange offer or other transaction pursuant to which it combines with a public shell company.

[5] 15 U.S.C. 77a.

[6] *See* Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 (''Schapiro Letter''), at pages 3–4.

[7] *See* Schapiro Letter at page 4.

[8] *See* ''Investor Bulletin: Reverse Mergers'' 2011–123.

(2) Maintained on both an absolute and an average basis for a sustained period a minimum stock price of at least $4; and

(3) Timely filed with the Commission all required reports since the consummation of the reverse merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the filing described in (1) above.

In addition, a reverse merger company would be required to maintain on both an absolute and an average basis a minimum stock price of at least $4 through listing.

The Exchange believes that requiring a ''seasoning'' period prior to listing for reverse merger companies should provide greater assurance that the company's operations and financial reporting are reliable, and will also provide time for its independent auditor to detect any potential irregularities, as well as for the company to identify and implement enhancements to address any internal control weaknesses. The seasoning period will also provide time for regulatory and market scrutiny of the company, and for any concerns that would preclude listing eligibility to be identified.

In addition, the Exchange believes that the proposed rule change will increase transparency to issuers and market participants with respect to the factors considered by NYSE Regulation in assessing reverse merger companies for listing, and generally should reduce the risk of regulatory concerns with respect to these companies being discovered after listing. However, the Exchange notes that, while it believes the proposed requirements would be a meaningful additional safeguard, it is not possible to guarantee that a reverse merger company (or any other listed company) is not engaged in undetected accounting fraud or subject to other concealed and undisclosed legal or regulatory problems.

For purposes of proposed Section 102.01F of the Manual (which will be applicable to reverse merger companies which qualify to list under the domestic companies criteria of Section 102.01) and proposed Section 103.01E of the Manual (which will be applicable to reverse merger companies which qualify to list under the non-U.S. companies criteria of Section 103.01), a ''Reverse Merger'' would mean any transaction whereby an operating company became an Exchange Act reporting company by combining with a shell company that was an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company that qualified for initial listing under Section 102.06 of the Manual (*i.e.*, the Exchange's special purpose acquisition company (''SPAC'') listing standard). In determining whether a company was a shell company, the Exchange would consider, among other factors: Whether the company was considered a ''shell company'' as defined in Rule 12b–2 under the Exchange Act; what percentage of the company's assets were active versus passive; whether the company generated revenues, and if so, whether the revenues were passively or actively generated; whether the company's expenses were reasonably related to the revenues being generated; how many employees worked in the company's revenue-generating business operations; how long the company had been without material business operations; and whether the company had publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

In order to qualify for initial listing, a company that was formed by a Reverse Merger (a ''Reverse Merger Company'') would be required to comply with one of the initial listing standards for operating companies set forth in Section 102.01C or 103.01B of the Manual and the applicable distribution, stock price and market value requirements of Sections 102.01A and 102.01B of the Manual (in the case of companies listing pursuant to Section 102.01) and Section 103.01A (in the case of companies listing pursuant to Section 103.01). Proposed Sections 102.01F and 103.01E would supplement and not replace any applicable requirements of Sections 102.01 or 102.03. However, in addition to the otherwise applicable requirements of Sections 102.01 or 103.01, a Reverse Merger Company would be eligible to submit an application for initial listing only if it meets the additional criteria specified above.

The Exchange would have the discretion to impose more stringent requirements than those set forth above if the Exchange believed it was warranted in the case of a particular Reverse Merger Company based on, among other things, an inactive trading market in the Reverse Merger Company's securities, the existence of a low number of publicly held shares that were not subject to transfer restrictions, if the Reverse Merger Company had not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger Company had disclosed that it had material weaknesses in its internal controls which had been identified by management and/or the Reverse Merger Company's independent auditor and had not yet implemented an appropriate corrective action plan.

A Reverse Merger Company would not be subject to the requirements of proposed Section 102.01F or proposed Section 103.01E, as applicable, if it was listing in connection with an Initial Firm Commitment Underwritten Public Offering (as defined in Section 102.01B [9]) where the proceeds to the Reverse Merger Company were sufficient on a standalone basis to generate $40,000,000 in aggregate market value of publicly-held shares and the offering was occurring subsequent to or concurrently with the reverse merger.[10] In that case, the Reverse Merger Company would only need to meet the requirements of one of the initial listing standards in Section 102.01C or Section 103.01B, as applicable.[11] The Exchange believes that it is appropriate to exempt Reverse merger Companies from the proposed rule where they are listing in conjunction with a sizable offering, as those companies would be subject to the same Commission review and due diligence by underwriters as a company listing in conjunction with its IPO or any other company listing in conjunction with an Initial Firm Commitment Underwritten Public Offering, so it would be inequitable to

[9] For purposes of Section 102.01B, a company is listing in connection with its Initial Firm Commitment Underwritten Public Offering if (i) Such company has a class of common stock registered under the Exchange Act, (ii) such common stock has never been listed on a national securities exchange in the period since the commencement of its current registration under the Exchange Act, and (iii) such company is listing in connection with a firm commitment underwritten public offering that is its first firm commitment underwritten public offering of its common stock since the registration of its common stock under the Exchange Act.

[10] The prospectus and registration statement covering the offering would thus need to relate to the combined financial statements and operations of the Reverse Merger Company.

[11] The Commission notes that under NYSE's proposal a non-U.S. Reverse Merger Company that will not be subject to the proposed 103.01E requirements because it is listing in connection with an Initial Firm Commitment Underwritten Public Offering where the proceeds in the offering will generate a minimum of $40,000,000 in aggregate market value of publicly held shares would still have to meet all the requirements in Section 103.01A of the Manual that include a market value of publicly held shares of $100 million worldwide.

subject them to more stringent requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [12] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that, as discussed above under the heading ''Purpose'', its purpose is to apply more stringent initial listing requirements to a category of companies that have raised regulatory concerns, thereby furthering the goal of protection of investors and the public interest.

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

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.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–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–NYSE–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 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 NYSE. 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–2011–38, and should be submitted on or before August 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20243 Filed 8–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65038; File No. SR–NASDAQ–2011–100]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Defined Term ''Closed-End Fund'' in Rules 5910 and 5920

August 5, 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 July 26, 2011, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the defined term ''Closed-End Fund'' in Rules 5910 and 5920 to include business development companies.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[4]

5910. The NASDAQ Global Market

(a) Entry Fee

(1)–(2) No change.

(3) A closed-end management investment company [registered] regulated under the Investment Company Act of 1940, as amended (a ''Closed-End Fund''), that submits an application for listing on the Nasdaq Global Market shall pay to Nasdaq an

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.cchwallstreet.com.*

entry fee of $5,000 (of which $1,000 represents a non-refundable application fee).

(4)–(10) No change.

(b)–(f) No change.

5920. The Nasdaq Capital Market

(a) Entry Fee

(1)–(2) No change.

(3) A closed-end management investment company [registered] regulated under the Investment Company Act of 1940, as amended (a ''Closed-End Fund''), that submits an application for listing on the Nasdaq Capital Market shall pay to Nasdaq an entry fee of $5,000 (of which $1,000 represents a non-refundable application fee).

(4)–(9) No change.

(b)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A business development company is a type of closed-end management investment company that is regulated under the Investment Company Act of 1940 (the ''1940 Act'').[5] While Nasdaq has historically treated business development companies as closed-end funds for purposes of computing listing fees, in defining a closed-end fund for these purposes Nasdaq inadvertently excluded business development companies. Specifically, Nasdaq defines a closed-end fund in Rules 5910(a)(3) and 5920(a)(3) as a closed-end management investment company that is registered under the 1940 Act. While business development companies are regulated under the 1940 Act, they are not registered under the 1940 Act.[6]

It was never Nasdaq's intent to exclude business development companies from the definition of a closed-end fund and Nasdaq has historically treated them as closed-end funds[7] and charged them the fees applicable to closed-end funds. In this filing, Nasdaq proposes to modify the definition of a closed-end fund contained in Rules 5910(a)(3) and 5920(a)(3) to include business development companies. As revised, a closed-end fund will be defined as a closed-end management investment company regulated under the 1940 Act.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, Nasdaq believes the proposed rule change will clarify Nasdaq's treatment of business development companies as closed-end funds, thereby eliminating any confusion surrounding Nasdaq's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder in that it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, 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. In addition, Nasdaq provided the Commission with 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. The proposed rule change will clarify the treatment of business development companies under Nasdaq's rules and consistent with the way Nasdaq has historically applied those rules. Therefore, Nasdaq believes it does not significantly affect the protection of investors or the public interest or raise any novel or significant regulatory issues.

At any time within 60 days of the filing of the proposed rule change, the Commission may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved of 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:

[5] 15 U.S.C. 80a–1 *et seq.*

[6] Under Section 2(a)(48) of the 1940 Act, 15 U.S.C. 80a–2(a)(48), a business development company is a closed-end company which elects to be subject to certain provisions of the 1940 Act. Such a company is exempt from the other requirements of the 1940 Act, including the registration requirements of Section 8, 15 U.S.C. 80a–8, pursuant to Section 6(f)(1), 15 U.S.C. 80a–6(f)(1).

[7] For example, when Nasdaq recently adopted a cap on Listing of Additional Shares fees for closed-end funds, Nasdaq described a closed-end fund as a type of company ''regulated'' under the 1940 Act. Exchange Act Release No. 63732 (January 19, 2011), 76 FR 4401 (January 25, 2011) (SR–NASDAQ–2011–007). In adopting this cap, Nasdaq's intent was for it to apply to business development companies and, in fact, the rule change adopting a cap for all closed-end funds replaced a filing where Nasdaq proposed to adopt the cap only for business development companies. See SR–NASDAQ–2010–119 (withdrawn), available at *http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2010/SR-NASDAQ-2010-119.pdf.*

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

Electronic Comments

Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–100 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–NASDAQ–2011–100. 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 website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2011–100 and should be submitted on or before August 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20274 Filed 8–9–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65036; File No. SR–BX–2011–049]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Definition of ''Professional'' and Require That Professional Orders Be Appropriately Marked by BOX Options Participants

August 4, 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 July 26, 2011, NASDAQ OMX BX (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend proposes to amend [sic] Chapter I, Section 1 (Definitions) of the Trading Rules of the Boston Options Exchange Group, LLC (''BOX'') to adopt a definition of ''Professional'' on BOX and require that all Professional orders be appropriately marked by BOX Options Participants. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com*, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend Chapter I, Section 1 (Definitions) to adopt a definition of ''Professional'' on BOX and require that all Professional orders be appropriately marked.

This filing is similar to the recent filings of the NASDAQ Stock Market LLC (for the NASDAQ Options Market (''NOM''), PHLX NASDAQ OMX, Inc. (''Phlx''), the International Securities Exchange, Inc. (''ISE''), and Chicago Board Options Exchange, Incorporated, (''CBOE''), which dealt with establishing a new definition of ''Professional'' as a person or entity that places a certain high volume of orders in listed options per day on average during a calendar month in his or her own beneficial account.[4]

Background

A BOX Options Participant (''Participant'') is a firm or organization that is registered with the Exchange pursuant to Chapter II of the BOX Trading Rules for purposes of participating in options trading on BOX as an ''Order Flow Provider'' or ''Market Maker.''[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release Nos. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR–NASDAQ–2010–099) (approval order), 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR–Phlx-2010–05) (approval order); 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (SR–CBOE–2009–078) (approval order); and 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) (SR–ISE–2006–26) (approval order). A filing by NYSE Amex LLC (''NYSE Amex'') proposing a similar Professional designation was based on the Phlx, ISE, and CBOE proposals. *See* Securities Exchange Act Release No. 61818 (March 31, 2010), 75 FR 17457 (April 6, 2010) (SR–NYSEAmex–2010–18) (approval order). The cited filings discuss, among other things, the need for a Professional designation to be applied by members of the respective exchanges because the systems of such exchanges differentiate for execution or processing purposes based on order origin. BOX does not similarly differentiate among orders based on their origin.

[5] *See* Chapter I, Section 1(a)(42) of the BOX Rules. Many BOX Participants are also members of other options exchanges such as, for example, ISE, CBOE, or Phlx. Order Flow Provider (''OFP'') is defined in Chapter I, Section 1(a)(48) as those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading. Market Maker is defined in Chapter I, Section 1(a)(31) of the BOX Rules as an Options Participant registered with the

Continued

Options traded by Participants (which may include trades on behalf of Public Customers)[6] on BOX, a wholly electronic exchange, are electronically executable and routable. The BOX Trading Host[7] and the BOX Trading Rules provide for the ranking, display, and execution of all orders in price/time priority without regard to the status of the person or entity entering an order.[8] The Exchange notes that BOX has, similar to NOM and in contrast to certain other options markets, a ''flat'' system that does not differentiate for execution or processing purposes among orders on the basis of who or what entity enters an order on BOX.[9] BOX notes that no change to execution priority, on the BOX Book or within the BOX Price Improvement Period, is being proposed as part of this rule change.[10]

BOX routes orders to other options exchanges (''Away Exchanges'') under certain circumstances through non-affiliated third-party broker-dealers and BOX's general routing procedures are set forth in Chapter XII, Section 5 (Order Routing to Away Exchanges). These procedures state in subsection (b)(ii) that, among other things, once routed away from BOX, an order becomes subject to the rules and procedures of the destination market.[11]

Many other options exchanges, namely the CBOE, ISE, NYSE AMEX, NOM and Phlx, already have rules that are similar to the Professional designation rule proposed by the Exchange (a ''Professional'' is a person or entity that places 390 or more orders in listed options per day on average during a calendar month in his or her own beneficial account). These above noted exchanges make differentiations based on whether an order is marked Professional or otherwise. Some BOX Options Participants, including its routing broker-dealers are, as noted, also members of other options exchanges that have a Professional designation. As members of these exchanges, such Options Participants are subject to their Professional designation rules. And, as mentioned previously, exchange rules indicate that orders routed by these broker-dealers become subject to the rules and procedures of the Away Exchanges.[12]

The Exchange believes that disparate rules with respect to Professional order designation, and lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage.[13] The Exchange believes that it is therefore prudent and necessary to have a Professional designation rule as is commonplace in the industry, particularly where BOX's routing broker-dealers (like other BOX Options Participants) are members of several exchanges that have rules requiring Professional order designations.

The Proposal

The Exchange proposes new Chapter I, Section 1(a)(52) to state that the term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).[14] Moreover, in order to properly represent orders entered on BOX according to the new definition, a Participant will be required to appropriately mark all Professional orders.[15] To comply with this requirement, Participants will be required to review their Public Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Professional orders.[16]

The Professional definition proposed is similar to the Professional designation that has been adopted by NOM, Phlx, ISE, CBOE, and NYSE Amex.[17] Upon publication of the notice regarding this proposal, BOX will issue an Information Circular to Participants providing them at least ten business days notice of the procedures for the implementation of the proposal. As noted, the Professional definition will not impact BOX's price/time order entry (priority) system.[18] Instead, this proposal will ensure that BOX Participants mark their Professional orders properly, that is, similarly in terms of Professional order identification regardless of whether the order is placed on BOX or another of the options exchanges with a Professional designation. Moreover, with the proposed Professional designation in place, BOX will be able to accept orders that are marked Professional.[19]

Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the BOX Rules.

[6] Public Customer is defined in Chapter I, Section 1(a)(52) as a person that is not a broker or dealer in securities.

[7] Trading Host is defined in Chapter I, Section 1(a)(67) of the BOX Rules as the automated system used by BOX for the trading of options contracts.

[8] *See* Chapter V, Section 16(a)(iv) that discusses BOX's price/time execution priority and states, in relevant part, that all options orders at the best price are executed based on the time the order was entered.

[9] In contrast to BOX, hybrid options exchanges such as, for example, Phlx and CBOE blend auction and electronic market structures that differentiate certain order priority and execution functions based upon, among other things, the origin of the order (e.g. whether the order was a customer, market maker, broker or dealer, firm, or other type of order); these exchanges also charge different fees based on order origin. BOX does, like other exchanges, charge differing fees based on order origin (i.e. BOX trading fees for customers are different than for market makers and broker-dealer proprietary accounts). The Exchange is not proposing any changes in respect of the BOX fee structure and at this time, will continue to charge Professionals under the category of Customer.

[10] *See* Chapter V, Section 16 regarding execution and price/time priority and Section 18 regarding the Price Improvement Period.

[11] Chapter XII, Section 5(b)(ii), ''The Eligible Order that is routed away shall remain outside BOX for a period of time and may be executed in whole or in part subject to the applicable trading rules of the relevant Away Exchange. While an Eligible Order remains outside BOX, it shall have no time priority, relative to other orders received from Options Participants at the same price which may be executed against orders in the BOX Book. Requests from Options Participants to cancel their Eligible Orders while the order is routed away to an Away Exchange and remains outside BOX shall be processed, subject to the applicable trading rules of the relevant Away Exchange.''

[12] Once routed away from BOX, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. *See* Chapter XII, Section 5(b)(ii).

[13] The Exchange believes that the risk of regulatory arbitrage is heightened where not all exchanges have Professional designation rules; and there is a lack of uniformity regarding exchanges marking orders as Professional when routing such orders away.

[14] Each remaining sub-section of Chapter I, Section 1(a) is re-numbered by adding one to the current number (*e.g.* 52 becomes 53, and 53 becomes 54).

[15] BOX intends to require Participants to identify Professional orders submitted electronically by identifying them in the account type field, and will notify Participants via an Information Circular regarding this requirement.

[16] Participants will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While Participants will only be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as other than Professional orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Participant and the Participant will be required to change the manner in which it is representing the customer's orders within five business days. The Exchange will issue a Regulatory Circular to Participants providing more detailed information regarding the quarterly review process. This is similar to the process of other options exchanges that have adopted a Professional designation. *See, e.g.,* Securities Exchange Act Release Nos. 63028 (October 1, 2010) 75 FR 62443 (October 8, 2010) (SR–NASDAQ–2010–099) (approval order) and 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR–Phlx–2010–05) (approval order).

[17] *See supra* note 3 [sic].

[18] For example, unlike the Phlx proposal, (which among other things, discusses that Professional order on Phlx will be treated in the same manner as off-floor brokers in terms of certain priority rules), BOX's proposed rule change does not address or impact any priority relationship for Professional orders as opposed to other BOX orders.

[19] As proposed, the Professional order designation, may be used for customer orders only. While BOX does not intend to differentiate among Professional and other orders for priority purposes,

The designation of Professional or Professional order would not result in any different treatment of such orders for purposes of the BOX Trading Rules concerning order protection or routing to away exchanges. That is, all non broker or dealer orders, including those that meet the definition of Professional orders, would continue to be treated as Public Customers for purposes of the BOX Rules regarding order protection and routing to away exchanges.[20]

BOX believes that identifying Professional accounts based upon the average number of orders entered in qualified accounts is an appropriately objective approach that will reasonably distinguish such persons and entities from retail investors or market participants. BOX proposes the threshold of 390 orders per day on average over a calendar month, because it believes that this number far exceeds the number of orders that are entered by retail investors in a single day.[21] Moreover, the 390 orders per day threshold proposed by BOX directly corresponds to the daily order volume recognized by NOM, ISE, and other options exchanges that have, as previously discussed, established Professional order designations.[22] In addition, basing the standard on the number of orders that are entered in listed options for a qualified account(s) assures that Professional account holders cannot inappropriately avoid the purpose of the rule by spreading their trading over multiple exchanges, and using an average number over a calendar month will prevent gaming of the 390 order threshold.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[23] in general, and furthers the objectives of Section 6(b)(5) of the Act[24] 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, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by defining Professional and indicating that all Professional orders shall be appropriately marked by Participants.

Further, the Exchange believes that disparate rules regarding Professional order designation, and a lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that it is therefore prudent and necessary to have a Professional designation rule as is commonplace in the industry, particularly where BOX's routing broker-dealers (like other BOX Options Participants) are members of several exchanges that have rules requiring Professional order designations. The designation of Professional or Professional order would not result in any different treatment of such orders for purposes of the BOX Trading Rules concerning order protection or routing to away exchanges. That is, all non broker or dealer orders, including those that meet the definition of Professional orders, would continue to be treated as Public Customers for purposes of the BOX Rules regarding order protection and routing to away exchange. As such, the Exchange believes the proposed rule change is 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

(a) This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act[25] and Rule 19b–4(f)(6) thereunder.[26]

(b) This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, 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.[27] The Exchange believes that uniform rules in respect of Professional order designation promotes the best regulation. The Exchange believes that it is therefore prudent and necessary to have a Professional designation rule as is commonplace in the industry, particularly where BOX's routing broker-dealers (like other BOX Options Participants) are members of several exchanges that have rules requiring Professional order designations. Additionally, the Exchange notes that the proposed rule change does not impact any priority relationship for Professional orders as opposed to other BOX orders, nor does it impact the treatment of Professional orders under the BOX Rules regarding order protection or routing to away exchanges.

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–BX–2011–049 on the subject line.

it may, in the future, feel that it is appropriate to differentiate its routing or other fees in respect of Professional orders as opposed to other orders; and if so, the Exchange intends to file an appropriate fee-related rule filing(s). This filing does not address the current BOX fee structure.

[20] *See* Chapter XII of the BOX Rules.

[21] 390 orders is equal to the total number of orders that a person would place in a day if that person entered one order every minute from market open to market close. Many of the largest retail-oriented electronic brokers offer lower commission rates to customers they define as ''active traders.'' Publicly available information from the Web sites of Charles Schwab, Fidelity, TD Ameritrade and OptionsXpress all define ''active trader'' as someone who executes only a few options trades per month. The highest required trading activity to qualify as an active trader among these four firms was 35 trades per quarter.

[22] The similarity of BOX's proposed Professional definition to that of other options exchanges is important from the regulatory perspective, that is, from a desire to promote a national market system that minimizes regulatory arbitrage.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

[27] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the 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.

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–2011–049. 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–BX–2011–049 and should be submitted on or before August 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20272 Filed 8–9–11; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65035; File No. SR–CHX–2011–20]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Impose Certain Requirements on Exchange-Registered Institutional Broker Firms That Operate a Separate Non-Institutional Broker Unit Within the Firm

August 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 2011, Chicago Stock Exchange, Inc. (''Exchange'' or ''CHX'') 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a rule to impose certain requirements on Exchange-registered Institutional Broker firms which operate a separate, non-Institutional Broker unit within the firm. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*), at the Exchange's Office of the Secretary and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add Rule 5 to Article 17 to permit Exchange-registered Institutional Broker (''Institutional Broker'') firms to establish and operate a separate, non-Institutional Broker unit within the firm. The Exchange proposes to add information barrier requirements for Institutional Brokers that wish to operate a separate unit within the larger firm to conduct business otherwise than as an Institutional Broker. By this proposal, the Exchange believes that it will enable existing and new Institutional Broker firms to engage in trading activities through the non-Institutional Broker unit in a manner which better delineates the activity occurring on and off the Exchange.

CHX-registered Institutional Brokers are an elective sub-category of Exchange Participants requiring registration with the Exchange and are subject to the obligations of Article 17 of the CHX rules, in addition to the other provisions of Exchange rules. Institutional Broker firms typically provide order handling and execution services for other broker-dealers or institutional clients, and are the successors to the floor brokers under the Exchange's previous floor-based, auction trading model.[3] The Commission's order approving the Exchange's New Trading Model noted, ''Institutional brokers would be deemed to be participants operating on the Exchange, although they would not effect transactions from a physical trading floor (since the Exchange will no longer have a physical trading floor) and could trade from any location. A customer order would be deemed to be on the Exchange when received by an institutional broker, but would not have priority in the Matching System until it is entered into the system.''[4] Although an Institutional Broker is deemed to be operating on the Exchange, the CHX is proposing to allow a separate unit within the larger Institutional Broker firm to execute orders otherwise than on the Exchange.[5]

New Rule 5 proposes to establish new conditions for an Institutional Broker

[3] The Exchange replaced its traditional auction marketplace with its New Trading Model beginning in 2006. *See* Securities Exchange Act Rel. No. 34–54550 (Sept. 29, 2006), 71 FR 59563 (Oct. 10, 2006) (SR–CHX–2006–05).

[4] *Id.,* Section II.C. Institutional Brokers.

[5] *See* email from James Ongena, Vice President, Associate General Counsel, CHX, to Christopher Chow, Special Counsel, Commission, dated August 3, 2011.

firm that wishes to include another unit of the firm (the ''non-Institutional Broker unit'') to conduct business otherwise than as an Institutional Broker, including the handling and execution of orders on the CHX, in other trading centers or in the over-the-counter (''OTC'') marketplace. The non-Institutional Broker unit would not be considered as part of the facilities of the Exchange and its trading activity would be treated the same as any other order sending Participant which is not registered as an Institutional Broker. Since the non-Institutional Broker unit will be acting as an order entry unit of the firm, it will be generally subject to the strictures of the Exchange's rules, except as to Articles 16 and 17 which pertain to Market Makers and Institutional Brokers, respectively, on an exclusive basis. For purposes of applying the Exchange's Schedule of Fees and Assessments, the activity of a non-Institutional Broker unit would not be considered as Institutional Broker activity. A multi-unit Institutional Broker firm would be required to establish and maintain information barriers between the Institutional Broker unit and non-Institutional Broker unit. Such information barriers will be required to be reasonably designed to prevent the Institutional Broker unit from having knowledge of unexecuted customer orders in possession of the non-Institutional Broker unit and likewise prevent the non-Institutional Broker unit from having knowledge of unexecuted customer orders in the possession of the Institutional Broker unit. The Institutional Broker unit may, however, transmit an order to the non-Institutional Broker unit of the firm for purposes of handling and executing the order, and the non-Institutional Broker unit may likewise transmit an order to the Institutional Broker unit.

Through this filing, the Exchange proposes that Institutional Broker firms which wish to operate a non-Institutional Broker unit would be required to create and maintain adequate information barrier procedures. At the time an Institutional Broker firm wished to set up a non-Institutional Broker unit within the firm, it would be required to submit to the Exchange its Written Supervisory Procedures (''WSPs'') as they pertain to these information barrier procedures. At minimum, the WSPs will have to satisfactorily address (1) The manner in which the firm will satisfy the requirements of this rule (including the compliance and audit procedures it proposes to implement to ensure that the information barrier is maintained); (2) identify the names and titles of the person or persons responsible for maintenance, supervision and surveillance of the procedures; (3) make a commitment to provide the Exchange with such information and reports relating to its transactions as the Exchange may request; and (4) make a commitment to take appropriate remedial action against any person violating this rule or the Institutional Broker firm's internal compliance and audit procedures, as well as confirming that the firm recognizes that the Exchange may take appropriate remedial action for any such violation.

In addition, the proposed rule provides that the firm's WSPs must describe the internal controls that the Institutional Broker firm will implement to satisfy each of the conditions stated in the rule, and the compliance and audit procedures proposed to implement and ensure that the controls are maintained. If the Exchange determined that the organizational structure and the compliance and audit procedures proposed by the Institutional Broker firm are acceptable, the Exchange would so inform the Institutional Broker firm, in writing. Unless the Exchange found that an Institutional Broker firm's information barrier procedures were acceptable, an Institutional Broker firm may not conduct business other than on the Exchange.

The Exchange believes that the provisions regarding the information barrier procedures of new Rule 5 are sufficient to address the issues presented by the operation of a non-Institutional Broker unit within a firm which is an Exchange-registered Institutional Broker. The CHX understands that the non-Institutional Broker unit of such firms will largely function in a similar manner to other order sending firms which are not registered with the Exchange as an Institutional Broker or Market Maker pursuant to our rules. To the extent that the non-Institutional Broker wished to act as a Market Maker on the Exchange, it would have to comply with the more stringent information barrier procedures under Article 16, Rule 9 (Limitation on Dealings).[6] The Exchange believes that the information barrier procedures of proposed Rule 5 are adequate to provide a meaningful separation of the Institutional Broker and non-Institutional Broker units in order to ensure that the latter can fairly be treated as not being part of the Exchange's trading facilities.[7]

Finally, the Exchange is proposing an Interpretation and Policy to define the elements of an adequate information barrier procedure for purposes of new Rule 5. Proposed Interpretation and Policy .01 defines an ''information barrier'' is an organizational structure in which the Institutional Broker functions are conducted in a physical location separate from the locations in which the non-Institutional Broker activities are conducted. The Institutional Broker and non-Institutional Broker units should not use trading or order management systems which permit them to share information about orders or transactions being handled by each respective unit. However, upon request and not on his or her own initiative, an Institutional Broker Representative may furnish to persons at the same firm or an affiliated firm (''affiliated persons''), the same sort of market information that the Institutional Broker would make available in the normal course of its Institutional Broker activity to any other person. The Institutional Broker Representative must provide such information to affiliated persons in the same manner that he or she would make such information available to a non-affiliated person. An individual person may not simultaneously act as an Institutional Broker Representative and as a representative of the non-Institutional Broker unit. The Exchange believes that the information barrier requirements as set forth in the proposed Interpretation and Policy are reasonable and appropriate given the nature of the relationship between the

[6] Because market makers normally trade as principal, either against other customer orders of the firm or other, unaffiliated market participants, the heightened potential for conflicts of interest in their transactions requires a stricter separation between the market making and non-market making units of a single firm. For example, under Article 16, Rule 9, the information barrier procedures of market making unit must address the potential use or misuse of post-trade clearing information to compromise the information barrier. While Institutional Broker firms do trade from time-to-time as principal, they normally handle orders as agent for their customers. To the extent that a particular Institutional Broker firm conducts a significant amount of its business as principal, the Exchange will require that its information barrier procedures specifically address that activity in a manner which is reasonably designed to address any conflicts of interest. The Exchange currently conducts surveillance of the principal trading activity of Institutional Broker firms for compliance with our rules, such as the prohibition on trading ahead contained in Article 9, Rule 17. Since the principal purpose of creating a non-Institutional Broker unit is to have it considered to be not ''on the Exchange,'' the Exchange believes that proposed standards for information barrier procedures as set forth in new Rule 5 are adequate to address those concerns.

[7] The Exchange represents that it will implement as of the time this proposal is approved adequate oversight processes which are reasonably designed to ensure compliance by our Participants with the requirements of the provisions of this proposal.

Institutional Broker and non-Institutional Broker units. The CHX further believes that the articulation of these standards in the proposed Interpretation and Policy will provide clarity and direction to interested Institutional Brokers in creating their information barrier procedures.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[8] and furthers the objectives of Section 6(b)(5) in particular,[9] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest by setting forth the rules and principles governing the trading activity of Institutional Brokers. By permitting an Institutional Broker firm to operate a separate non-Institutional Broker unit within the larger firm subject to the new information barrier requirements, the proposed new Rule 5 would provide protection to the customers of such firms. Rather than routing orders which were directed to the OTC marketplace to a third-party broker-dealer for execution, the proposed non-Institutional Broker unit of the firm could handle and execute such orders. The Exchange believes that this handling could reduce the possibility for errors in transmission from one firm to another, as well as eliminate potential costs imposed by the third-party broker-dealer which might have to be borne by the order sender or the Institutional Broker firm. The creation and maintenance of adequate information barrier procedures, which are subject to the review, approval and inspection of the Exchange, should help ensure that the Institutional Broker and non-Institutional Broker units are in fact being operated separately, and that treatment of the non-Institutional Broker unit as not being part of the facilities of the Exchange is appropriate.

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.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CHX–2011–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2011–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2011–20 and should be submitted on or before August 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20244 Filed 8–9–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65033; File No. SR–NYSEAmex–2011–55]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending Section 101 of the NYSE Amex Company Guide To Adopt Additional Listing Requirements for Companies Applying To List After Consummation of a ''Reverse Merger'' With a Shell Company

August 4, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 22, 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[10] 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.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Section 101 of the NYSE Amex Company Guide (the ''Company Guide'') to adopt additional initial listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex proposes to adopt more stringent listing requirements for operating companies that become Exchange Act reporting companies by combining with a shell company which is an Exchange Act reporting company. The proposed listing requirements would apply to combinations with a shell company which is an Exchange Act reporting company, through a reverse merger, exchange offer or otherwise (a ''reverse merger transaction'').

In a reverse merger transaction, an existing public shell company merges with a private operating company in a transaction in which the shell company is the surviving legal entity.[4] While the public shell company survives the merger, the shareholders of the private operating company typically hold a large majority of the shares of the public company after the merger and the management and board of the private company will assume those roles in the post-merger public company. The assets and business operations of the post-merger surviving public company are primarily, if not solely, those of the former private operating company. The Exchange understands that private operating companies generally enter into reverse merger transactions to enable the company and its shareholders to sell shares in the public equity markets. By becoming a public reporting company via a reverse merger, a private operating company can access the public markets quickly and avoid the generally more expensive and lengthy process of going public by way of an initial public offering. While the public shell company is required to report the reverse merger in a Form 8–K filing with the Securities and Exchange Commission (the ''Commission''), generally there are no registration requirements under the Securities Act of 1933 (the ''Securities Act'')[5] at that point in time, as there would be for an IPO.

Significant regulatory concerns, including accounting fraud allegations, have arisen with respect to a number of reverse merger companies in recent times. The Commission has taken direct action against reverse merger companies. During 2011, the Commission has suspended trading in the securities of a number of reverse merger companies and has revoked the securities registration of a number of reverse merger companies.[6] The Commission also recently brought an enforcement proceeding against an audit firm relating to its work for reverse merger companies.[7] In addition, the Commission issued a bulletin on the risks of investing in reverse merger companies, noting potential market and regulatory risks related to investing in reverse merger companies.[8]

In response to these concerns, NYSE Regulation staff has been conducting heightened, risk-informed reviews of reverse merger companies seeking to list on the NYSE or NYSE Amex to consider factors other than the enumerated initial listing criteria in making listing determinations. In this regard, Commentary .01 to Section 101 of the Exchange's Company Guide, provides that the Exchange has ''broad discretionary authority over the initial and continued listing of securities in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.'' Thus, pursuant to Section 101 of the Company Guide, ''[t]he Exchange may use such discretion to deny initial inclusion, apply additional or more stringent criteria for the initial or continued inclusion of particular securities, or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing.''

In light of the well-documented concerns related to some reverse merger companies described above, the Exchange believes it is appropriate to codify in its rules specific requirements with respect to the initial listing qualification of reverse merger companies. As proposed, a reverse merger company would not be eligible for listing unless the combined entity had, immediately preceding the filing of the initial listing application:

(1) Traded for at least one year in the U.S. over-the-counter market, on another national securities exchange or on a regulated foreign exchange following the consummation of the reverse merger and (i) In the case of a domestic issuer, filed with the Commission a Form 8–K including all of the information required by Item 2.01(f) of Form 8–K, including all required audited financial statements, or (ii) in the case of a foreign private issuer, filed the information described in (i) above on Form 20–F;

(2) Maintained on both an absolute and an average basis for a sustained period a minimum closing stock price equal to the stock price requirement, including all requirements based on stock price, applicable to the initial listing standard under which the Reverse Merger Company was qualifying to list; and

(3) Timely filed with the Commission all required reports since the consummation of the reverse merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the filing described in (1) above.

In addition, a reverse merger company would be required to maintain through listing, on both an absolute and an average basis, a minimum closing stock price equal to the stock price requirement, including all requirements based on stock price, applicable to the

[4] In some cases a private company effects an exchange offer or other transaction pursuant to which it combines with a public shell company.

[5] 15 U.S.C. 77a.

[6] *See* Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 (''Schapiro Letter''), at pages 3–4.

[7] *See* Schapiro Letter at page 4.

[8] *See* ''Investor Bulletin: Reverse Mergers'' 2011–123.

initial listing standard under which the reverse merger company was qualifying to list.

The Exchange believes that requiring a ''seasoning period'' prior to listing for reverse merger companies should provide greater assurance that the company's operations and financial reporting are reliable, and will also provide time for its independent auditor to detect any potential irregularities, as well as for the company to identify and implement enhancements to address any internal control weaknesses. The seasoning period will also provide time for regulatory and market scrutiny of the company, and for any concerns that would preclude listing eligibility to be identified.

In addition, the Exchange believes that the proposed rule change will increase transparency to issuers and market participants with respect to the factors considered by NYSE Regulation in assessing reverse merger companies for listing, and generally should reduce the risk of regulatory concerns with respect to these companies being discovered after listing. However, the Exchange notes that, while it believes the proposed requirements would be a meaningful additional safeguard, it is not possible to guarantee that a reverse merger company (or any other listed company) is not engaged in undetected accounting fraud or subject to other concealed and undisclosed legal or regulatory problems.

For purposes of proposed Section 101(e) of the Company Guide, a ''Reverse Merger'' would mean any transaction whereby an operating company became an Exchange Act reporting company by combining with a shell company that was an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company that qualified for initial listing under Section 119 of the Company Guide (*i.e.,* the Exchange's special purpose acquisition company (''SPAC'') listing standard). In determining whether a company was a shell company, the Exchange would consider, among other factors: Whether the company was considered a ''shell company'' as defined in Rule 12b–2 under the Exchange Act; what percentage of the company's assets were active versus passive; whether the company generated revenues, and if so, whether the revenues were passively or actively generated; whether the company's expenses were reasonably related to the revenues being generated; how many employees worked in the company's revenue-generating business operations; how long the company had been without material business operations; and whether the company had publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

In order to qualify for initial listing, a company that was formed by a Reverse Merger (a ''Reverse Merger Company'') would be required to comply with one of the initial listing standards for operating companies set forth in Section 101(a)–(d) of the Company Guide and the applicable distribution, stock price and market value requirements of Section 102 of the Company Guide.[9] Proposed Section 101(e) would supplement and not replace any applicable requirements of Sections 101 and 102. However, in addition to the otherwise applicable requirements of Sections 101 and 102, a Reverse Merger Company would be eligible to submit an application for initial listing only if it meets the additional criteria specified above.

The Exchange would have the discretion to impose more stringent requirements than those set forth above if the Exchange believed it was warranted in the case of a particular Reverse Merger Company based on, among other things, an inactive trading market in the Reverse Merger Company's securities, the existence of a low number of publicly held shares that were not subject to transfer restrictions, if the Reverse Merger Company had not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger Company had disclosed that it had material weaknesses in its internal controls which had been identified by management and/or the Reverse Merger Company's independent auditor and had not yet implemented an appropriate corrective action plan.

A Reverse Merger Company would not be subject to the requirements of proposed Section 101(e) if it was listing in connection with a firm commitment underwritten public offering where the proceeds to the Reverse Merger Company were at least $40,000,000 and the offering was occurring subsequent to or concurrently with the reverse merger.[10] In that case, the Reverse Merger Company would only need to meet the requirements of one of the initial listing standards in Sections 101(a)–(d). The Exchange believes that it is appropriate to exempt Reverse merger Companies from the proposed rule where they are listing in conjunction with a sizable offering, as those companies would be subject to the same Commission review and due diligence by underwriters as a company listing in conjunction with its IPO, so it would be inequitable to subject them to more stringent requirements.

2. Statutory Basis

The Exchange believes that 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) of the Act,[12] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that, as discussed above under the heading ''Purpose'', its purpose is to apply more stringent initial listing requirements to a category of companies that have raised regulatory concerns, thereby furthering the goal of protection of investors and the public interest.

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

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

[9] Section 110(a) of the Company Guide sets forth alternative distribution requirements for foreign companies.

[10] The prospectus and registration statement covering the offering would thus need to relate to the combined financial statements and operations of the Reverse Merger Company.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–55 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–2011–55. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Amex. 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–2011–55, and should be submitted on or before August 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20242 Filed 8–9–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Delegation of Authority 339]

Delegation by the Assistant Secretary of State for Educational and Cultural Affairs of Certain Functions to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs

By virtue of the authority vested in me as the Assistant Secretary of State for Educational and Cultural Affairs, including by Delegation of Authority No. 236–3 (August 28, 2000), and to the extent permitted by law, I hereby delegate to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs:

a. The functions in the North/South Center Act of 1991 (22 U.S.C. 2075) (relating to the operation of the Center for Cultural and Technical Interchange between North and South).

b. The functions in the Center for Cultural and Technical Interchange between East and West Act of 1960 (22 U.S.C. 2054) (relating to the operation of the Center for Cultural and Technical Interchange between East and West).

c. The functions in the Arts and Artifacts Indemnity Act (20 U.S.C. 971) (relating to the certification on national interest for exhibits to provide indemnification).

d. Representation of the Secretary of State on the Federal Council on the Arts and Humanities (pursuant to 20 U.S.C. 958).

e. The functions in section 102 of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2452) (relating to the provision by grant, contract or otherwise for a wide variety of educational and cultural exchanges).

Notwithstanding this Delegation, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Assistant Secretary for Educational and Cultural Affairs may at any time exercise any function or authority delegated herein.

Any reference in this Delegation of Authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This Delegation shall take effect immediately upon signature and shall remain in effect until revoked, or until an Under Secretary for Public Diplomacy and Public Affairs is appointed and enters on duty, whichever occurs first. Nothing in this Delegation of Authority shall be deemed to supersede or revoke any existing delegation of authority, which shall remain in force and effect during and after the term of this Delegation.

Actions taken pursuant to any authority delegated herein, and which have been taken prior to and are in effect on the date of this Delegation, are hereby confirmed and ratified. Such actions shall remain in force as if taken under this Delegation, unless or until rescinded, amended, or superseded.

This Delegation shall be published in the **Federal Register**.

Dated: July 26, 2011.

Ann Stock,

Assistant Secretary, Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2011–20309 Filed 8–9–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 20–24C, Approval of Propulsion Fuels and Lubricating Oils

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20–24C, Approval of Propulsion Fuels and Lubricating Oils. This AC provides guidance on regulations and policy applicable to adding fuels and oils to type certificates as engine, aircraft, or auxiliary power unit (APU) operating limitations. It also provides acceptable methods, but not the only methods, that may be used to approve aircraft, engines, or APUs to operate with specified propulsion fuels and lubricating oils.

DATES: The Engine and Propeller Directorate issued AC 20–24C on July 29, 2011.

FOR FURTHER INFORMATION CONTACT: The Federal Aviation Administration, Attn: Mark Rumizen, Aviation Fuels Specialist, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA

01803–5299; *telephone:* (781) 238–7113; *fax:* (781) 238–7199; *e-mail: mark.rumizen@faa.gov.*

Comments were submitted to the FAA during the period the draft AC was posted for public viewing on the FAA's Aviation Safety Draft Documents Open for Comment Web site. The disposition of these comments can be viewed at the FAA's Regulatory and Guidance library Web site (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/Frameset?OpenPage*).

SUPPLEMENTARY INFORMATION: AC 20–24C cancels AC 20–24B and describes established methods of adding fuels and oils as engine, aircraft, or APU operating limitations. These established methods reflect procedures and practices employed by the Engine and Propeller Directorate (EPD) for oversight of successful aviation fuel and lubricating oil certification projects conducted over many years. These procedures and practices have essentially relied on fuels and oils grade or brand designations that were identified by industry voluntary consensus-based, military, or other governmental standards.

A draft of this AC was made available for public comment on September 1, 2010, for a period of 60 days. The FAA received many comments regarding the use of other, new and novel methods to add fuels and oils as engine, aircraft, or APU operating limitations in lieu of the methods described in the AC. However, the EPD cannot develop guidance describing other, new and novel methods until we gain sufficient certification oversight experience with these projects. Therefore, the final AC does not contain guidance on these new and novel methods to add fuels and oils as engine aircraft, or APU operating limitations.

How To Obtain Copies: A paper copy of AC 20–24C may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by taxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.faa.gov/regulations_policies* (then click on ''Advisory Circulars'').

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

Issued in Burlington, Massachusetts, on July 29, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–20324 Filed 8–9–11; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Saint Louis County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to respond to the terms of the existing Trunk Highway (TH) 53 easement across the United Taconite mine.

FOR FURTHER INFORMATION CONTACT: Philip Forst, Environmental Specialist, Federal Highway Administration, 380 Jackson Street, Suite 500, Saint Paul, Minnesota 55101, Telephone (651) 291–6110; or Brian Larson, Project Manager, Minnesota Department of Transportation (District 1), 1123 Mesaba Avenue, Duluth, Minnesota 55811, *Telephone:* (218) 725–2745.

SUPPLEMENTARY INFORMATION: The Minnesota Department of Transportation was given notice by United Taconite on May 5, 2010, that easement rights for a portion of existing Highway 53 between Virginia and Eveleth are being terminated. The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT) will prepare an EIS on a proposal to address termination of the easement rights by United Taconite. The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including (1) No-build, (2) Purchasing title and possession of the existing TH 53 alignment, (3) Construction on partial new alignment, and (4) Construction on new alignment.

The Scoping Document/Draft Scoping Decision Document is anticipated to be published in late 2011. A press release will be published to inform the public of the document's availability. Copies of Scoping Document will be published on a Mn/DOT Web site as well as distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be give for the time and place of the meeting. The Scoping Decision Document will be published after the public comment period has closed.

A Draft EIS will be prepared based on the outcome of and closely following the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public notice will be given for the time and place of the public hearing on the Draft EIS. Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action.

This project is utilizing a National Environmental Policy Act (NEPA)/404 merger process to seek concurrence by multiple Federal agencies on the project's purpose and need, range of alternatives to be considered, range of alternatives to be evaluated in detail, and selection of a preferred alternative. In addition to the Federal Highway Administration as the lead Federal Agency for this NEPA effort, the NEPA/404 merger process includes the following Federal agencies: United States Army Corps of Engineers, The United States Environmental Protection Agency.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(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.)

Issued on: August 1, 2011.

Philip Forst,

Environmental Specialist, Federal Highway Administration.

[FR Doc. 2011–20354 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Environmental Impact Statement; Cottonwood and Watonwan Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Environmental Impact Statement (EIS) will be prepared to address operational and safety issues on three sections of Trunk Highway (TH) 60.

FOR FURTHER INFORMATION CONTACT: Philip Forst, Environmental Specialist, Federal Highway Administration, 380 Jackson Street, Suite 500, Saint Paul, Minnesota 55101, Telephone (651) 291–6110; or Peter Harff, Project Manager, Minnesota Department of Transportation (District 7), 2151 Bassett Drive, Mankato, Minnesota 56001–6888, *Telephone:* (507) 304–6165.

SUPPLEMENTARY INFORMATION: The Minnesota Department of Transportation completed a Final Environmental Impact Statement for TH 60 from Worthington to St. James in 1983 (FHWA–MN–EIS–82–02–F). A Record of Decision (ROD) was issued by the Federal Highway Administration in 1984. The preferred alternative outlined in the 1983 EIS and 1984 ROD consisted of constructing a four-lane facility on a mix of new and existing alignment for a distance of approximately 52 miles. Portions of the project have been constructed, however, there are three segments of the 1983 EIS preferred alternative that have not been constructed as a four-lane facility: (1) Just west of the City of St. James to the eastern edge of the City of Butterfield, (2) western edge of the City of Butterfield to just east of the city of Mountain Lake, and (3) just west of the City of Mountain Lake to the northeast edge of the City of Windom. These three segments are approximately 5.3 miles, 4.2 miles, and 7.5 miles long, respectively.

It has been more than three years since the last major Federal action on this project. Because the original NEPA process was completed in 1984, a Supplemental EIS will be prepared to address changes in the project area, proposed changes to the preferred alternative identified in the 1983 EIS, and changes to regulations and Minnesota Statutes since the ROD was issued in 1984.

The Supplemental EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including (1) No-build, and (2) constructing a four-lane expressway.

The draft Supplemental EIS is anticipated to be published in late 2011. A press release will be published to inform the public of the document's availability. Copies of the draft Supplemental EIS will be posted on a MnDOT web site as well as distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public hearing will also be held during the comment period. Public notice will be give for the time and place of the hearing.

A final Supplemental EIS will be prepared based on the outcome of public and agency responses to the draft Supplemental EIS. The final Supplemental EIS will be available for agency and public review and comment. Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action.

The Federal Highway Administration is the lead Federal Agency for this NEPA effort. The United States Army Corps of Engineers and the United States Fish and Wildlife Service are Cooperating Agencies for this NEPA process.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the Supplemental EIS should be directed to the FHWA at the address provided above.

(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.)

Issued on: August 1, 2011.

Philip Forst,

Environmental Specialist, Federal Highway Administration, Saint Paul, Minnesota 55101.

[FR Doc. 2011–20347 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2006–26367 and FMCSA–2011–0131]

Joint Motor Carrier Safety Advisory Committee and Medical Review Board Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Joint Motor Carrier Safety Advisory Committee (MCSAC) and Medical Review Board (MRB) meeting.

SUMMARY: FMCSA announces that the Agency's MCSAC and MRB will hold a joint meeting on Monday, August 29, 2011. The MCSAC will continue to meet on Tuesday, August 30–Wednesday, August 31, with the afternoon of August 31 being used for a meeting of the Cross-Border Trucking Pilot Program subcommittee. All three days of the meeting will be open to the public for their duration.

TIME AND DATES: The MCSAC–MRB meeting will be held on Monday, August 29, 2011, from 8:30 a.m. to 5 p.m., Eastern Time (E.T.), and the MCSAC meeting will continue on Tuesday and Wednesday, August 30–31, from 8:30 a.m. to 1 p.m., E.T. The last hour of each day of the full committee meeting will be reserved for public comment. At 1:30 p.m., E.T., on Wednesday, August 31, the MCSAC Cross Border Trucking Pilot Program subcommittee will meet until 5 p.m., E.T., with a public comment period from 4:30–5 p.m., E.T. The 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.

Matters to be considered: The MCSAC and MRB will consider expert presentations on obstructive sleep apnea during the joint meeting on Monday. On Tuesday, the MCSAC will consider the report of its Electronic On-Board Recorder (EOBR) Implementation Subcommittee established in response to Task 11–04, with relevant expert presentations on the topic. On Wednesday, the MCSAC will return to its Task 11–02 regarding roadside violation severity weightings in the Carrier Safety Measurement System in FMCSA's Compliance, Safety, Accountability (CSA) program. That afternoon, the MCSAC Subcommittee established in response to Task 11–03, regarding the Agency's Cross Border Trucking Pilot Program, will meet. Copies of all MCSAC Task Statements

are available at *http://mcsac.fmcsa.dot.gov.*

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.*

Information on services for individuals with disabilities:

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Elizabeth Turner at 617–494–2068.

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 (FACA, 5 U.S.C. App 2).

MRB

Section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59) requires the Secretary of Transportation with the advice of the MRB to ''establish, review, and revise medical standards for operators of Commercial Motor Vehicles (CMVs) that will ensure that the physical condition of operators is adequate to enable them operate the vehicles safely.'' On November 2, 2010, the Secretary of Transportation announced the five medical experts who serve on the MRB. FMCSA is planning revisions to the physical qualification regulations of CMV drivers, and the MRB will provide the necessary science-based guidance to establish realistic and responsible medical standards. The MRB operates in accordance with FACA.

Sleep Apnea and Other Sleep Disorders

The MCSAC and the MRB will discuss ideas and concepts the Agency should consider for regulatory guidance or future rulemaking on obstructive sleep apnea.

EOBR Implementation Task

The MCSAC EOBR Implementation Subcommittee will report back to the full committee on its work on Task 11–04, to examine technical issues relating to the electronic transfer of hours-of-service information from trucks to law enforcement personnel at the roadside.

Roadside Violation Severity Weightings Task

The MCSAC will continue its deliberations on Task 11–02, concerning violation severity weightings under the Compliance, Safety, Accountability (CSA) program.

Cross Border Trucking Pilot Program Task

The MCSAC Subcommittee will continue its work on Task 11–03 concerning the opening of the Southern Border to long-haul Mexican trucks.

II. Meeting Participation

Oral comments from the public will be heard during the last hour of each day of this meeting. Members of the public may submit written comments on this topic by Wednesday, August 24, 2011, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room WI2–140, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room WI2–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Issued on: August 5, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–20295 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0142]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 17 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before September 9, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0142 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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 of the person signing the comment, if submitted on behalf of an

association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 17 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Stephan P. Adamczyk

Mr. Adamczyk, age 49, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, no light perception. Following an examination in 2011, his optometrist noted, ''Based on the results of my examination, I certify that in my medical opinion, Stephen P. Adamczyk has sufficient vision to perform the tasks required to operate a commercial vehicle.'' Mr. Adamczyk reported that he has driven straight trucks for 24 years, accumulating 1.3 million miles. He holds a Class C operator's license from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Shaun E. Burnett

Mr. Burnett, 37, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/125. Following an examination in 2011, his optometrist noted, ''Once again, in my optometric opinion, Shaun is sufficiently capable of operating a commercial vehicle while performing the required tasks in his profession.'' Mr. Burnett reported that he has driven tractor-trailer combinations for 14 years, accumulating 1.4 million miles. He holds a Class A Commercial Driver's License (CDL) from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevin W. Cannon

Mr. Cannon, 41, has had glaucoma and severe loss of vision in his left eye due to glaucoma since 2008. Visual acuity in his right eye is 20/20 and in his left eye, no light perception. Following an examination in 2011, his optometrist noted, ''He has significant vision in my professional opinion to safely operate a commercial vehicle.'' Mr. Cannon reported that he has driven tractor-trailer combinations for 19 years, accumulating 950,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV. He exceeded the speed limit by 13 miles per hour (mph).

Daniel W. Eynon

Mr. Eynon, 49, has had a macular scar in his right eye due to an injury sustained in 1978. The best corrected visual acuity in his right eye is 20/160 and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''In my medical opinion, the patient has sufficient vision to perform his driving tasks and to operate a commercial vehicle.'' Mr. Eynon reported that he has driven tractor-trailer combinations for 28 years, accumulating 2.5 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Anton Filic

Mr. Filic, 39, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, ''I, Bert Bubela, OD, certify that in my medical opinion Anton Filic has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Filic reported that he has driven straight trucks for 6 years, accumulating 480,000 miles and tractor-trailer combinations for 6 years, accumulating 900,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark E. Geesner

Mr. Gessner, 48, has been hyperopic in both of his eyes since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/80. Following an examination in 2011, his optometrist noted, ''In my professional medical opinion, Mr. Mark Gessner has more than sufficient vision to perform the driving tasks required in operating a commercial vehicle.'' Mr. Gessner reported that he has driven straight trucks for 10 years, accumulating 500,000 miles and tractor-trailer combinations for 11 years, accumulating 990,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes but one conviction for a moving violation in a CMV; failure to obey a traffic signal.

Stephen A. Grieser

Mr. Grieser, 60, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is count-finger vision and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''I am in agreement with Dr. Kim Powell that the K2 restriction be removed from his CDL license and that he be granted a CDL without restriction.'' Mr. Grieser reported that he has driven straight trucks for 32 years, accumulating 320,000 miles and tractor-trailer combinations for 32 years, accumulating 448,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV; he exceeded the speed limit by 10 mph.

Michael L. Harrison

Mr. Harrison, 56, has had complete loss of vision in his left eye due an injury in 1971. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2011, his optometrist noted, ''Based on meeting your requirements, I believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Harrison reported that he has driven straight trucks for 1½ years, accumulating 124,500 miles, tractor-trailer combinations for 26 years, accumulating 2 million miles and buses for 1½ years, accumulating 76,500 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV; he exceeded the speed limit by 23 mph.

Dennis H. Heller

Mr. Heller, 58, has had complete loss of vision in his left eye due to a traumatic incident in 1994. The best corrected visual acuity in his right eye is 20/25. Following an examination in 2011, his ophthalmologist noted, ''Mr. Heller describes commercial operation of trucks for many years and reports no trouble in their operation. I can see no reason from an ocular standpoint that his performance has changed over the years although of course he has no true stereopsis since the time of his accident.'' Mr. Heller reported that he has driven straight trucks for 42 years, accumulating 1.4 million miles and tractor trailer-combinations for 37 years, accumulating 111,000 miles. He holds a CDL Class A from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Reginald J. Horner

Mr. Horner, 70, has had ruptured globe in his right eye due to a traumatic injury he sustained in 2001. The best corrected visual acuity in his right eye is no light perception and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''In my opinion, Mr. Horner's condition should not preclude him from sufficient vision to perform driving tasks of a commercial vehicle.'' Mr. Horner reported that he has driven straight trucks for 16 years, accumulating 9,600 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Eric L. Kinner

Mr. Kinner, 54, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2011, his optometrist noted, ''This letter is to certify in my medical opinion, that Mr. Kinner has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Kinner reported that he has driven straight trucks for 9 years, accumulating 330,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Everett H. Logan

Mr. Logan, 44, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''It is my opinion that Mr. Everett Logan has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Logan reported that he has driven straight trucks for 3 years, accumulating 150,000 miles and tractor-trailer combinations for 19 years, accumulating 2.1 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert E. Morgan, Jr.

Mr. Morgan, 54, has a prosthetic right eye due to an injury he sustained as a child. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2011, his optometrist noted, ''I feel that he is capable of safely operating a commercial vehicle.'' Mr. Morgan reported that he has driven straight trucks for 35 years, accumulating 525,000 miles. He holds a Class C operator's license from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jerry R. Orndorff

Mr. Orndorff, 63, has had a macular hole in his right eye since 2005. The best corrected visual acuity in his right eye 20/60 and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''My opinion is that he should be safe to drive with the vision he presently has.'' Mr. Orndorff reported that he has driven tractor-trailer combinations for 29 years, accumulating 1.7 million miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerald A. Pilarski

Mr. Pilarski, 50, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my opinion, he has sufficient vision to perform the driving tasks to operate a commercial vehicle safely.'' Mr. Pilarski reported that he has driven straight trucks for 15 years, accumulating 450,000 miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jason W. Rupp

Mr. Rupp, 39, has had strabismic amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/150. Following an examination in 2011, his optometrist noted, ''In my opinion, Mr. Rupp has sufficient vision to perform the tasks required of a commercial driver.'' Mr. Rupp reported that he has driven tractor-trailer combinations for 6 years, accumulating 60,000 miles. He holds a Class C operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John F. Zalar

Mr. Zalar, 54, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, count-finger vision. Following an examination in 2011, his optometrist noted, ''In my opinion, I feel this patient can perform all driving tasks required to operate a commercial vehicle.'' Mr. Zalar reported that he has driven tractor-trailer combinations for 33 years, accumulating 3.3 million miles. He holds a Class D operator's license from New York. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business September 9, 2011. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: August 4, 2011.

Larry W. Minor,

Associate Administrator Office of Policy.

[FR Doc. 2011–20297 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9258; FMCSA–2001–9561; FMCSA–2003–15268; FMCSA–2007–2733]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 17 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 15, 2011. Comments must be received on or before September 9, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2001–9258; FMCSA–2001–9561; FMCSA–2003–15268; FMCSA–2007–2733, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line 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., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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 of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 17 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 17 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are the following:

Domenic J. Carassai
Fred W. Duran
Bruce E. Hemmer
Steven P. Holden
Russell R. Inlow
Christopher G. Jarvela
Donald L. Jensen
Brad L. Mathna
Vincent P. Miller
Warren J. Nyland
Dennis M. Prevas
Greg L. Riles
Robert N. Taylor
Calvin D. Tomlinson
Wesley E. Turner
Mona J. Van Krieken
Paul S. Yocum

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 17 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 17743; 66 FR 30502; 66 FR 33990; 66 FR 41654; 68 FR 35772; 68 FR 37197; 68 FR 44837; 68 FR 48989; 70 FR 33937; 70 FR 41811; 70 FR 42615; 72 FR 12666; 72 FR 25831; 72 FR 40360; 74 FR 34632). Each of these 17 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified

at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 9, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 17 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 5, 2011.

Larry W. Minor,

Associate Administrator Office of Policy.

[FR Doc. 2011–20298 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0112]

Federal Motor Vehicle Safety Standards; Electronic Stability Control; Technical Report on the Effectiveness of Electronic Stability Control Systems for Cars and LTVs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report on its existing Safety Standard 126, *Electronic Stability Control Systems.* The report's title is: *Crash Prevention Effectiveness in Light-Vehicle Electronic Stability Control: An Update of the 2007 NHTSA Evaluation.*

DATES: Comments must be received no later than December 8, 2011

ADDRESSES: Report: The technical report is available on the Internet for viewing in PDF format at *http://www-nrd.nhtsa.dot.gov/Pubs/811486.pdf.* You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Robert Sivinski (NVS–431), National Highway Traffic Safety Administration, Room W53–438, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Comments: You may submit comments [identified by Docket Number NHTSA–2011–0112] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

You may call Docket Management at 202–366–9826.

Instructions: For detailed instructions on submitting comments, see the Procedural Matters section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Bob Sivinski, Statistician, Evaluation Division, NVS–431, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room W53–438, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366–3860. *E-mail: robert.sivinski@dot.gov.*

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: You may see a list of published evaluation reports at *http://www-nrd.nhtsa.dot.gov/cats/listpublications.aspx?Id=226&ShowBy=Category* and if you click on any report you will be able to view it in PDF format.

SUPPLEMENTARY INFORMATION: Statistical analyses based on data for calendar years 1997 to 2009 from the Fatality Analysis Reporting System (FARS) and the General Estimates System (GES) of the National Automotive Sampling System (NASS) estimate the long-term effectiveness of electronic stability control (ESC) for passenger cars and LTVs (light trucks and vans). Safety Standard 126 establishes standards for electronic stability control systems manufactured for use in light vehicles. This report is an update of a previous NHTSA analysis of ESC effectiveness (72 FR 41582) published in 2007.

The principal findings are that ESC was associated with a six percent decrease in the likelihood that a vehicle would be involved in any police reported crash and an 18 percent reduction in the probability that a vehicle would be involved in a fatal crash. For passenger cars, the reductions are 5 percent and 23 percent, respectively; for LTVs, 7 percent and 20 percent. Each of these reductions is statistically significant except for the 5 percent overall effect in cars.

Procedural Matters:

How can I influence NHTSA's thinking on this subject?

NHTSA welcomes public review of the technical report. NHTSA will submit to the Docket a response to the comments and, if appropriate, will supplement or revise the report.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket

number of this document (NHTSA–2010–0116) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

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 (65 FR 19477) or you may visit *http://www.regulations.gov.*

Please send two paper copies of your comments to Docket Management, fax them, or use the Federal eRulemaking Portal. The mailing address is U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Bob Sivinski, Statistician, Evaluation Division, NVS–431, National Highway Traffic Safety Administration, Room W53–440, 1200 New Jersey Avenue, SE., Washington, DC 20590 (or e-mail them to *robert.sivinski@dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit them via the Federal eRulemaking Portal.

Will the agency consider late comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

James F. Simons,

Director, Office of Regulatory Analysis and Evaluation.

[FR Doc. 2011–20234 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0114]

Spyker Automobielen B.V.; Receipt of Application for Temporary Exemption from FMVSS No. 126

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for a temporary exemption from Federal Motor Vehicle Safety Standard (FMVSS) No. 126, *Electronic Stability Control Systems.*

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Spyker Automobielen B.V. (Spyker) has applied for a temporary exemption for its C line of vehicles from the requirements of FMVSS No. 126, the standard for electronic stability control systems. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

NHTSA is publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and has made no judgment on the merits of the application.

DATES: You should submit your comments not later than August 25, 2011.

FOR FURTHER INFORMATION CONTACT: Thomas Healy, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–212, Washington, DC 20590. *Telephone:* (202) 366–2992; Fax: (202) 366–3820.

Comments: We invite you to submit comments on the application described above. You may submit comments identified by the docket number at the heading of this notice by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal holidays. *Telephone:* (202) 366–9826.

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

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, Spyker has submitted a petition (dated November 19, 2010) asking the agency for a temporary exemption from the requirements of FMVSS No. 126, *Electronic Stability Control Systems,* for its C line of vehicles. 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.

NHTSA established part 555 to implement the statutory provisions concerning temporary exemptions. Vehicle manufacturers may apply for temporary exemptions from Federal motor vehicle safety standards 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 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 (49 U.S.C. 30113).

A petitioner must provide specified information in submitting a petition for exemption. Foremost among these requirements are that the petitioner must set forth the basis of the application under 49 CFR 555.6, and the reasons why the exemption would be in the public interest and, as applicable, consistent with the objectives of the National Traffic and Motor Vehicle Safety Act (Safety Act), 49 U.S.C. Chapter 301. In a petition for economic hardship, the petitioner must explain in detail ''how compliance or failure to obtain an exemption would cause substantial economic hardship.'' 49 CFR 555.6(a)(1). The petition must also describe the efforts of the petitioner to comply with the standard at issue.

The agency closely examines and considers the information provided by manufacturers in support of these factors, and, in addition, pursuant to 49 U.S.C. 30113(b)(3)(A), determines whether an exemption is in the public interest and consistent with the Safety Act. Spyker requests a temporary exemption until September 1, 2013. Copies of Spyker's petition [1] are available for review and have been placed in the docket for this notice.

[1] Spyker has 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 the information that is the subject of this request.

II. Electronic Stability Control Systems Requirements

NHTSA published a final rule requiring that vehicles with a gross vehicle weight rating of 4,536 kilograms (kg) (10,000 pounds) and less be equipped with electronic stability control (ESC) in April of 2007. The rule seeks to reduce the risk of rollover crashes by assisting the driver in maintaining control of his or her vehicle in situations in which the vehicle begins to lose directional stability at the rear wheels (spin out) or directional control at the front wheels (plow out).

Preventing single-vehicle loss-of control crashes is the most effective way to reduce deaths resulting from rollover crashes. 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.[2] 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.[3]

ESC utilizes automatic computer-controlled braking of the individual wheels of the vehicle in order to assist the driver in maintaining vehicle control. An anti-lock brake system (ABS) is a prerequisite for an ESC system because ESC uses many of the same components as ABS. Thus, the cost of complying with FMVSS No. 126 is less for vehicle models already equipped with ABS. The ESC requirement becomes effective as to Spyker September 1, 2011.

III. Spyker's Petition

Spyker bases its request for exemption on the argument that compliance with FMVSS No. 126 ''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). Spyker requests that the exemption period begin on September 1, 2011 and extend 24 months until September 1, 2013.

A. Eligibility

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

[2] 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.

[3] *Id.*

10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113(d)). 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. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not state that a manufacturer has substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of ''manufacturer'' (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

Spyker Automobielen B.V. is a small volume manufacturer of luxury sports cars. Since 2005, Spyker Automobielen B.V. has manufactured less than 100 vehicles annually worldwide, and the company projects that it will manufacture 103 vehicles in 2011. However, the petition states that Spyker Automobielen B.V. is a wholly owned subsidiary of Spyker Cars NV, a publicly traded Netherlands corporation. Spyker Cars NV also owns Saab Automobile AG, a large Swedish car manufacturer. Spyker asserts that Spyker Automobielen B.V. is financially and operationally independent from Saab Automobile AG and that, based on past NHTSA determinations regarding the issue of sponsorship, Spyker Automobielen B.V. remains eligible for a temporary exemption based on economic hardship.

Since filing its petition, Spyker has informed the agency that Spyker Cars NV plans to sell Spyker Automobielen B.V. to CPP Global Holdings, a private holding company in the United Kingdom. Because of the relationship between Spyker Automobielen B.V., Spyker Cars NV, and Saab Automobile AG, and, in light of the plans to sell Spyker Automobielen B.V. to CPP Global Holdings, NHTSA will closely examine whether Spyker is eligible for a financial hardship exemption. NHTSA specifically requests comments on the issue of Spyker's eligibility.

B. Substantial Economic Hardship

Spyker states that it is suffering financial hardship because of lower than anticipated sales volumes due to the recent world wide economic recession. Specifically, Spyker suffered a net operating loss of approximately 132,000,000 Euros ($171,600,000) [4] from 2004 to 2009. Spyker projected a further loss in 2010 of 12,000,000 Euros ($15,600,000). Based on 2011–2013 financial projections, Spyker estimates that, if its petition were denied, it would bear a loss over three years of more than 41,000,000 Euros ($53,300,000) as opposed to an 8,000,000 Euros ($10,400,000) loss should the petition be granted, representing a difference of 33,000,000 Euros ($42,900,000). Spyker also states that the loss of sales in the U.S. that would result if the exemption petition were denied could not be made up in the rest of the world because the U.S. is the largest and most important market for the vehicle. Spyker argues that such consequences demonstrate ''substantial economic hardship'' within the meaning of 49 U.S.C. 30113(b)(3)(B)(i).

C. Good Faith Efforts To Comply

Spyker states that in 2008 it began working with Bosch Engineering, GmbH (Bosch) to develop an ESC system for the Spyker C line and D line models. Spyker states that in order to develop an ESC system, it first had to develop a new ABS system. In an effort to achieve compliance with FMVSS No. 126, Spyker has developed a vehicle to test its new ABS system and created a new ABS software package. Under its original testing schedule, Spyker planned to complete development of the ABS/ESC system before the September 1, 2011 compliance date of FMVSS No. 126. However, due to the drop in sales resulting from the global economic recession, Spyker did not have funds available to continue ESC development as planned.

Spyker states that its inability to commence testing in 2010 delayed its development schedule for ESC because it will have to wait an additional year for winter conditions necessary to test ESC.[5] Spyker states that it has spent 781,000 Euros ($1,015,300) developing an ESC system thus far. Spyker states that it will likely not have sufficient funds to continue work on its ESC system until the end of 2011. Spyker states that it will be able to have a test vehicle completed by the end of 2012 and an ESC system fully developed by 2013.

D. Public Interest

The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and would not have a significant adverse impact on safety. Specifically:

1. Spyker states that the exempted vehicles will comply with all FMVSSs other than the advanced airbag requirements of FMVSS No. 208, *Occupant crash protection,* and the standard that is the subject of this exemption request.[6]

2. The petitioner states that an exemption will benefit U.S. employment and U.S. companies because Spyker vehicles are distributed by a U.S. company, Spyker of North America, and are sold and serviced in the U.S. through a network of 18 dealers. Spyker argues that the denial of this exemption will negatively impact these companies.

3. Spyker argues that if the exemption is not granted, U.S. consumer choice would be harmed and that the agency has long maintained that the Safety Act seeks, if possible, to avoid limiting consumer choice.

4. The petitioner argues that given their exotic design and high-performance nature, the C line vehicles are not expected to be used extensively, nor are they expected to carry children with any significant frequency.

IV. Issuance of Notice of Final Action

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested petition. The agency has tentatively concluded that the petition is complete and that the petitioner is eligible to apply for the requested exemption. The agency has not made any judgment on the merits of the application and is placing a non-confidential copy of the petition in the docket.

We are providing a 15-day comment period in an effort to provide a decision with respect to the petition before the September 1, 2011 compliance date for FMVSS No. 126. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

[4] All dollar values are based on an exchange rate of 1 Euro = $1.30.

[5] Spyker states that it does not have the available financial resources to travel to other parts of the world to conduct winter testing and thus must wait for winter in Europe to complete ESC testing.

[6] Spyker also submitted a request for an extension of its previously granted exemption from compliance with the advanced air bag requirements of FMVSS No. 208 on October 13, 2010.

Issued on: August 5, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–20283 Filed 8–9–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–146895–05; TD 9412]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning election to expense certain refineries.

DATES: Written comments should be received on or before October 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election To Expense Certain Refineries.

OMB Number: 1545–2103.

Regulation Project Number: REG–146895–05 (TD 9412).

Abstract: This document contains temporary regulations relating to the election to expense qualified refinery property under section 179C of the Internal Revenue Code, and affects taxpayers who own refineries located in the United States. These temporary regulations reflect changes to the law made by the Energy Policy Act of 2005. The text of these temporary regulations also serves as the text of the proposed Regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time per Respondent: 10 Hours.

Estimated Total Annual Burden Hours: 120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20220 Filed 8–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209826–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning application of the grantor trust rules to nonexempt employees' trusts.

DATES: Written comments should be received on or before October 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application of the Grantor Trust Rules to Nonexempt Employees' Trusts.

OMB Number: 1545–1498.

Regulation Project Number: REG–209826–96.

Abstract: This regulation provides rules for the application of the grantor trust rules to certain nonexempt employees' trusts. Under Section 1.671–1(h)(3)(iii) of the regulation, the overfunded amount for certain foreign employees' trusts will be reduced to the extent the taxpayer demonstrates to the Commissioner, and indicates on a statement attached to a timely filed Form 5471, that the overfunded amount is attributable to a reasonable funding exception. The IRS needs this information to determine accurately the portion of the trust that is properly treated as owned by the employer.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20217 Filed 8–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8718

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8718, User Fee for Exempt Organization Determination Letter Request.

DATES: Written comments should be received on or before October 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: User Fee for Exempt Organization Determination Letter Request.

OMB Number: 1545–1798.

Form Number: Form 8718.

Abstract: The Omnibus Reconciliation Act of 1990 requires payment of a ''user fee'' with each application for a determination letter. Because of this requirement, the Form 8718 was created to provide filers the means to enclose their payment and indicate what type of request they were making.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 200,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 16,667.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20218 Filed 8–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning certain elections under the omnibus budget reconciliation act of 1993.

DATES: Written comments should be received on or before October 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Omnibus Budget Reconciliation Act of 1993.

OMB Number: 1545–1421.

Regulation Project Number: IA–62–93 (TD 8688).

Abstract: These regulations established various elections enacted by the Omnibus Budget Reconciliation Act of 1993 (OBRA) and provided immediate interim guidance of the time and manner of making the elections. These regulations enable taxpayers to take advantage of various benefits provided by OBRA and the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations, and farms.

Estimated Number of Respondents: 410,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 202,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20222 Filed 8–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8027 and 8027–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, and Form 8027–T, Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips.

DATES: Written comments should be received on or before October 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027), and Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027–T).

OMB Number: 1545–0714.

Form Number: Forms 8027 and 8027–T.

Abstract: To help IRS in its examinations of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips reported by employees, and in certain cases, the employer must allocate tips to certain employees. Forms 8027 and 8027–T are used for this purpose.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions and state, local or tribal governments.

Estimated Number of Respondents: 52,050.

Estimated Time per Respondent: 9 hours, 23 minutes.

Estimated Total Annual Burden Hours: 488,161.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20214 Filed 8–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 3921 and 3922

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3921, Exercise of an Incentive Stock Option Under Section 422(b), and Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c).

DATES: Written comments should be received on or before October 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 3921, Exercise of an Incentive Stock Option Under Section 422(b). Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c).

OMB Number: 1545–2129.

Form Number: 3921 and 3922.

Abstract: Form 3921 is a copy of the information return filed with the Internal Revenue Service by the corporation which transferred shares of stock to a recipient. Form 3922 is used by the corporation to record a transfer of the legal title of a share of stock acquired by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). These forms are required to be filed for stock transfers occurring after 2008.

Current Actions: One line item was added.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 51,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 25,205.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20223 Filed 8–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 637

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 637, Application for Registration (For Certain Excise Tax Activities).

DATES: Written comments should be received on or before October 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Registration (For Certain Excise Tax Activities).

OMB Number: 1545–0014.

Form Number: Form 637.

Abstract: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Revenue code section 4101 for purposes of the federal excise tax on taxable fuel imposed under Code sections 4041 and 4071; and to certain manufacturers or sellers and purchasers that must register under Code section 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Taxable fuel producers are required by Code section 4101 to register with the Service before incurring any tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions, and farms.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 13 hr., 31 min.

Estimated Total Annual Burden Hours: 27,020

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20221 Filed 8–9–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish & Wildlife Services

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Emergency Listing of the Miami Blue Butterfly as Endangered, and Emergency Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2011–0043 MO 92210–0–0008

RIN 1018–AX83

Endangered and Threatened Wildlife and Plants; Emergency Listing of the Miami Blue Butterfly as Endangered, and Emergency Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: We, the Fish and Wildlife Service (Service), exercise our authority pursuant to section 4(b)(7) of the Endangered Species Act of 1973, as amended (Act), to emergency list the Miami blue butterfly (*Cyclargus thomasi bethunebakeri*) as endangered. This subspecies is currently known to occur at only a few small remote islands within the Florida Keys. Current population numbers are not known, but are estimated in the hundreds of butterflies. We are also emergency listing the cassius blue butterfly (*Leptotes cassius theonus*), ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), and nickerbean blue butterfly (*Cyclargus ammon*) as threatened due to similarity of appearance to the Miami blue, with a special rule pursuant to section 4(d) of the Act.

Due to the subspecies' severe reduction in geographic range, small population sizes, and imminent threats, we need to make protective measures afforded by the Act available to the Miami blue immediately. This emergency rule provides Federal protection pursuant to the Act for a period of 240 days. A proposed rule to list the Miami blue butterfly as endangered and to list the cassius blue butterfly, ceraunus blue butterfly, and nickerbean blue butterfly as threatened due to similarity of appearance to the Miami blue is published concurrently with this emergency rule, and it can be found in this issue of the **Federal Register** in the Proposed Rules section.

DATES: This emergency rule becomes effective on August 10, 2011, and expires April 6, 2012.

ADDRESSES: The supporting information used in this emergency rulemaking is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960–3559.

FOR FURTHER INFORMATION CONTACT: Paula Halupa, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960–3559 by telephone 772–562–3909, ext. 257 or by *electronic mail: miamiblueinfo@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Miami blue is a small, brightly colored butterfly approximately 0.8 to 1.1 inches (1.9 to 2.9 centimeters [cm]) in length (Pyle 1981, p. 488) with a forewing length of 0.3 to 0.5 inches (8.0 to 12.5 millimeters) (Minno and Emmel 1993, p. 134). Wings of males are blue above (dorsally), with a narrow black outer border and white fringes; females are bright blue dorsally, with black borders and an orange/red and black eyespot near the anal angle of the hindwing (Comstock and Huntington 1943, p. 98; Minno and Emmel 1993, p. 134). The underside is grayish with darker markings outlined with white and bands of white wedges near the outer margin. The ventral hindwing has two pairs of eyespots, one of which is capped with red; basal and costal spots on the hindwing are black and conspicuous (Minno and Emmel 1993, p. 134). The winter (dry season) form is much lighter blue than the summer (wet season) form and has narrow black borders (Opler and Krizek 1984, p. 112). Seasonal wing pattern variation may be caused by changes in humidity, temperature, or length of day (Pyle 1981, p. 489). Miami blue larvae are bright green with a black head capsule, and pupae vary in color from black to brown (Minno and Emmel 1993, pp. 134–135).

The Miami blue is similar in appearance to three other sympatric (occupying the same or overlapping geographic areas without interbreeding) butterflies that occur roughly in the same habitats: cassius blue (*Leptotes cassius theonus*), ceraunus blue (*Hemiargus ceraunus antibubastus*), and nickerbean blue (*Cyclargus ammon*). The Miami blue is slightly larger than the ceraunus blue (Minno and Emmel 1993, p. 134), but the ceraunus blue has a different ventral pattern and flies close to the ground in open areas (Minno and Emmel 1994, p. 647). The cassius blue often occurs with the Miami blue, but has dark bars rather than spots on the undersides of the wings (Minno and Emmel 1994, p. 647). The Miami blue can be distinguished from the ceraunus blue and cassius blue by its very broad white ventral submarginal band, the dorsal turquoise color of both sexes, and the orange-capped marginal eyespot on the hind wings (Opler and Krizek 1984, p. 112). The nickerbean blue is also similar to the Miami blue in general appearance but is considerably smaller; it has three black spots across the basal hindwing, while the Miami blue has four (Calhoun *et al.* 2002, p. 15). The larvae and pupae of the nickerbean blue closely resemble the Miami blue (Calhoun *et al.* 2002, p. 15).

In a comparison of Miami blue butterfly specimens within the Florida Museum of Natural History (FLMNH) collection, Saarinen (2009, pp. 42–43) found a significant difference in wing chord length between males and females, with males having shorter wing chords than females. However, no significant differences were found between wing chord length in comparing wet and dry seasons, decade of collection, seven different regions, or between eastern mainland and Keys specimens (Saarinen 2009, pp. 42–43). No seasonal size differences were found between the mainland populations and those in the Keys (Saarinen 2009, p. 43).

In a comparison of body size in a recent Miami blue population (BHSP 2002–2006), females were significantly larger than males, and individuals sampled in the wet season were also significantly larger than in the dry season (Saarinen 2009, p. 43). In a comparison of recent Bahia Honda State Park (BHSP) individuals with specimens from historical collections (FLMNH data), BHSP individuals were significantly larger than historical specimens, females from BHSP were also significantly larger than historical female specimens, and BHSP adults measured in wet seasons were larger than those sampled in wet seasons in museum collections (Saarinen 2009, p. 43). Saarinen (2009, p. 47) suggested that perhaps larger adults were selected for over time with larger adults being more capable of dispersing and finding food and mates. Limited food resources during larval development or abrupt termination of availability of food in the last larval instar can lead to early pupation and a smaller adult size (T.C. Emmel, pers. comm., as cited in Saarinen 2009, p. 47). It is possible that differences in host plant (*e.g.,* nutrition) and age of specimens (*e.g.,* freshness) may also be factors when comparing body size between recent specimens and those from historical collections.

Taxonomy

The Miami blue belongs to the family Lycaenidae (Leach), subfamily Polyommatinae (Swainson). The species *Hemiargus thomasi* was originally described by Clench (1941, pp. 407–408), and the subspecies *Hemiargus thomasi bethunebakeri* was first described by Comstock and Huntington (1943, p. 97). Although some authors continue to use *Hemiargus,* Nabokov (1945, p. 14) instituted *Cyclargus* for some species, which has been supported by more recent research (Johnson and Balint 1995, pp. 1–3, 8–11, 13; Calhoun *et al.* 2002, p. 13; K. Johnson, Florida State Collection of Arthropods, *in litt.* 2002). There are differences in the internal genitalic structures of the genera *Hemiargus* and *Cyclargus* (Johnson and Balint 1995, pp. 2–3, 11; K. Johnson, *in litt.* 2002). Kurt Johnson (*in litt.* 2002), who has published most of the existing literature since 1950 on the blue butterflies of the tribe Polyommatini, reaffirmed that *thomasi* belongs in the genus *Cyclargus* (Nabokov 1945, p. 14), not *Hemiargus.* Accordingly, *Cyclargus thomasi bethunebakeri* (Pelham 2008, p. 256) and its taxonomic standing is accepted (Integrated Taxonomic Information System 2011, p. 1).

In 2003, questions about the taxonomic identity of Miami blues from BHSP were raised by a few individuals. To address these questions, the Service sent two pairs (male and female) of adult specimens to three independent taxonomists/reviewers (Dr. Jacqueline Miller, Associate Curator, Allyn Museum of Entomology (AME), FLMNH; Dr. Paul Opler, Colorado State University; and John Calhoun, Museum of Entomology, Florida State Collection of Arthropods) for verification. To avoid harm to the wild population, scientists examined moribund adults from a captive colony generated from individuals taken from BHSP. Each reviewer independently confirmed through various means (*e.g.,* comparison with confirmed specimens, dissection and examination of genitalia) that the identities of the adult specimens examined were *Cyclargus thomasi bethunebakeri* (J. Miller, *in litt.* 2003; P. Opler, *in litt.* 2003; J. Calhoun, *in litt.* 2003a). We received an additional confirmation from Lee Miller, Curator (AME, FLMNH) stating that the identities of the adult specimens examined were *Cyclargus thomasi bethunebakeri* (L. Miller, *in litt.* 2003). Taxonomic verification by genitalic dissection of the Miami blue at Key West National Wildlife Refuge (KWNWR) has not occurred, but preliminary molecular evidence has confirmed that they are the same taxon (E.V. Saarinen, unpub. data, as cited in Saarinen 2009, p. 18).

Life History

Like all butterflies, the Miami blue undergoes complete metamorphosis, with four life stages (egg, caterpillar or larva, pupa or chrysalis, and adult). The generation time is approximately 30–40 days (Carroll and Loye 2006, p. 19; Saarinen 2009, p. 22, 76). Although a single Miami blue female can lay 300 eggs, high mortality may occur in the immature larval stages prior to adulthood (T. Emmel, University of Florida [UF], pers. comm. 2002). Reported host plants are blackbead (*Pithecellobium* spp.), nickerbean (*Caesalpinia* spp.), balloonvine (*Cardiospermum* spp.), and presumably *Acacia* spp. (Kimball 1965, p. 49; Lenczewski 1980, p. 47; Pyle 1981, p. 489; Opler and Krizek 1984, p. 113; Minno and Emmel 1993, p. 134; Calhoun *et al.* 2002, p. 18; Cannon *et al.* 2010, p. 851). In addition, Rutkowski (1971, p. 137) observed a female laying one egg just above the lateral bud on snowberry (*Chiococca alba*). Eggs are laid singly near the base of young pods or just above the lateral buds of balloonvine and the flowers of leguminous trees (Opler and Krizek 1984, p. 113; Minno and Emmel 1993, p. 134); flower buds and young tender leaves of legumes are preferred (Minno and Minno 2009, p. 78; M. Minno, pers. comm. 2010).

On nickerbean (*Caesalpinia* spp.), females lay eggs on developing shoots, foliage, and flower buds (Saarinen 2009, p. 22). Oviposition occurs throughout the day with females often seeking terminal growth close to the ground (< 3.3 feet [< 1 meter]) or in locations sheltered from the wind (Emmel and Daniels 2004, p. 13). Eggs are generally laid singly, but may be clustered on developing leaves, shoot tips, and flower buds (Saarinen 2009, p. 22). After several days of development, larvae chew out of eggs and develop through four instar stages, with total larval development time lasting 3 to 4 weeks, depending upon temperature and humidity (Saarinen 2009, p. 22). Fourth instar larvae pupate in sheltered or inconspicuous areas, often underneath leaf whorls or bracts (Saarinen 2009, p. 22). Adult butterflies eclose (emerge) after 5 to 8 days, depending on temperature and humidity (Saarinen 2009, p. 22).

On blackbead plants, females lay eggs on flower buds and emerging leaves (Cannon *et al.* 2010, p. 851). Oviposition on, or larval consumption of, mature blackbead leaves was not observed (Cannon *et al.* 2010, p. 851). Thus, Cannon *et al.* (2010, p. 851) suggest that abundance may be limited by the availability of young blackbead leaves and buds for egg-laying, even if abundant suitable nectar sources (see Habitat) are available year-round.

On balloonvine, females lay single eggs near fruit (capsules) (Carroll and Loye 2006, p. 18). Newly hatched larvae chew distinctive holes through the outer walls of the capsules to access seeds (Minno and Emmel 1993, p. 134). After consuming seeds within the natal capsule, larvae must crawl to a sequence of two or three balloons before growing large enough to pupate. Attending ants follow through the same holes (see Interspecific relationships below). Miami blues were also observed to commonly pupate within mature capsules (sometimes with ants in attendance within the capsule) (Carroll and Loye 2006, p. 20).

The Miami blue has been described as having multiple, overlapping broods year-round (Pyle 1981, p. 489). Adults can be found every month of the year (Opler and Krizek 1984, pp. 112–113; Minno and Emmel 1993, p. 135; 1994, p. 647; Emmel and Daniels 2004, p. 9; Saarinen 2009, p. 22). Opler and Krizek (1984, pp. 112–113) indicated one long winter generation from December to April, during which time the adults are probably in reproductive diapause (a period in which growth, development, and physiological activity is suspended or diminished); a succession of shorter generations was thought to occur from May through November, the exact number of which is unknown. Glassberg *et al.* (2000, p. 79) described the Miami blue as having occurred all year, with three or more broods. Researchers have noted a marked decrease of adults from December to early February at BHSP, indicative of a short diapause (Emmel and Daniels 2003, p. 3; 2004, p. 9). Saarinen also noted that the life cycle at BHSP slowed in winter months and suspected a slight diapause (E.V. Saarinen and J.C. Daniels, unpub. data, as cited in Saarinen 2009, p. 22). Conversely, Minno (pers. comm. 2010) notes that there have been records of adults in December and January and suggests that this tropical butterfly may not have a winter diapause, but rather, emergence may be delayed by cold temperatures in some years. Salvato and Salvato (2007, p. 163) and Cannon *et al.* (2010, pp. 849–850) also reported numerous adults at BHSP and KWNWR, respectively, during winter months.

Information on adult lifespan is limited. Adults may live a maximum of 9 days, but most adults live only a few

days (J. Daniels, UF, pers. comm. 2003a, 2003b). In general, adult butterflies survive less than a week in the wild; there are approximately 8–10 generations per year (Saarinen *et al.* 2009a, p. 31). Generations are not completely discrete due to the variance in development time of all life stages (Saarinen et al. 2009a, p. 31).

Range size and dispersal—Adult Miami blues are nonmigratory and appear to be very sedentary (Emmel and Daniels 2004, p. 6). Based on mark-recapture work conducted in 2002–2003, recaptured adults (N=39) moved an average of 6.53 +/− 11.68 feet (2.0 +/− 3.6 meters), four individuals moved between 25 and 50 feet (7.6 and 15.2 meters), and only three individuals moved more than 50 feet (15.2 meters) over a few days (Emmel and Daniels 2004, pp. 6, 32–38). Few individuals were found to move between the lower and upper walkway locations of the south end colony sites at BHSP (approximately 100 feet [30.5 meters]); no movement between any of the smaller individual, isolated colony sites was recorded (Emmel and Daniels 2004, p. 6). However, Saarinen (2009, pp. 73, 78–79) found that genetic exchange between colonies occurred at BHSP and noted that small habitat patches may be crucial in providing links between subpopulations in an area.

Interspecific relationships—As in many lycaenids worldwide (Pierce *et al.* 2002, p. 734), Miami blue larvae associate with ants (Emmel 1991, p. 13; Minno and Emmel 1993, p. 135; Carroll and Loye 2006, pp. 19–20) in at least four genera of ants in three subfamilies of Formicidae (Saarinen and Daniels 2006, p. 71; Saarinen 2009, p. 131, 133). Miami blues using nickerbean at BHSP and Everglades National Park (ENP) (reintroduced individuals) were variously tended by *Camponotus floridanus, C. planatus, Crematogaster ashmeadi, Forelius pruinosus,* and *Tapinoma melanocephalum* (Saarinen and Daniels 2006, p. 71; Saarinen 2009, pp. 131, 138). *C. floridanus* was the primary ant symbiont, commonly found tending larvae; other ant species were encountered less often (Saarinen and Daniels 2006, p. 70; Saarinen 2009, pp. 131–132). Liquid (honeydew) exuded from the butterfly's dorsal nectary organ (honey gland) was actively imbibed by all species of ants (Saarinen and Daniels 2006, p. 70; Saarinen 2009, p. 132).

Late Miami blue instars were always found in association with ants, but early instars, prepupae, and pupae were frequently found without ants present (Saarinen and Daniels 2006, p. 70). *Forelius pruinosus* and *Tapinoma melanocephalum* were observed to derive honeydew from Miami blues they tended, but were not observed to actively protect them from any predator (Saarinen and Daniels 2006, p. 71; Saarinen 2009, p. 133). However, the presence of ants in the vicinity of larvae may potentially deter predators (Saarinen and Daniels 2006, pp. 71, 73; Saarinen 2009, p. 133, Trager and Daniels 2009, p. 480). Two additional ants, *Paratrechina longicornis* and *P. bourbonica,* have been identified as potential associates of the Miami blue (Saarinen and Daniels 2006, pp. 70–71; Saarinen 2009, pp. 131, 138). *P. longicornis* was found near Miami blue larvae and appeared to tend them during brief encounters; *P. bourbonica* tended another lycaenid, martial scrub-hairstreak (*Strymon martialis*) at BHSP (Saarinen and Daniels 2006, p. 70). Cannon *et al.* (2007, p. 16) also observed two ant species attending Miami blues on KWNWR. Based on photographs, the ants appeared to be *C. inaequalis* and *P. longicornis. C. planatus* was observed on blackbead.

In the 1980s, Miami blue larvae that fed on balloonvine in the upper Keys were also tended by ants (*C. floridanus* and *C. planatus*) (Carroll and Loye 2006, pp. 19–20). Carroll and Loye (2006, p. 20) found that *Camponotus* spp. raised with Miami blue larvae lived longer than ants raised with larvae of other lycaenid species or without any food source, demonstrating that larval secretions benefit ants.

More recently, Trager and Daniels (2009, p. 479) most commonly found *C. floridanus* and *C. planatus* associated with wild and recently released Miami blue larvae. In a comparison of Miami blue larvae raised with and without ants, no effect of ant presence was found on any measurements of larval performance (*e.g.,* age at pupation, pupal mass, length of pupation, total time as an immature) (Trager and Daniels 2009, p. 480). Miami blue larval development was found to be similar to that of other conspecific lycaenid species not tended by ants (Trager and Daniels 2009, p. 480). Although the relationships are not completely understood, it appears that Miami blue larvae may receive some benefits from tending ants (*e.g.,* potential defense from predators) without much, if any, costs incurred.

Habitat

The Miami blue is a coastal butterfly reported to occur in openings and around the edges of hardwood hammocks (forest habitats characterized by broad-leaved evergreens), and in other communities adjacent to the coast that are prone to frequent natural disturbances (*e.g.,* coastal berm hammocks, dunes, and scrub) (Opler and Krizek 1984, p. 112; Minno and Emmel 1994, p. 647; Emmel and Daniels 2004, p. 12). It also uses tropical pinelands (Minno and Emmel 1993, p. 134) and open sunny areas along trails (Pyle 1981, p. 489). In the Keys, it was most abundant near disturbed hammocks where weedy flowers provided nectar (Minno and Emmel 1994, p. 647). It also occurred in pine rocklands (fire-dependent slash pine community with palms and a grassy understory) on Big Pine Key (Minno and Emmel 1993, p. 134; Calhoun *et al.* 2002, p. 18) and elsewhere in Monroe and Miami-Dade Counties. In Miami-Dade County, it occurred locally inland, sometimes in abundance (M. Minno, pers. comm. 2010). Within KWNWR, all occupied areas had coastal strands and dunes fronted by beaches (Cannon *et al.* 2007, p. 13; Cannon *et al.* 2010, p. 851).

Larval host plants include blackbead, nickerbean, balloonvine, and presumably *Acacia* spp. (Dyar 1900, pp. 448–449, Kimball 1965, p. 49; Lenczewski 1980, p. 47; Pyle 1981, p. 489; Calhoun *et al.* 2002, p. 18). Gray nickerbean (*Caesalpinia bonduc*) is widespread and common in coastal south Florida. Following disturbances, it can dominate large areas (K. Bradley, The Institute for Regional Conservation [IRC], pers. comm. 2002). Gray nickerbean has been recorded as far north as Volusia County on the east coast, matching the historical range of the Miami blue, and Levy County on the west coast (J. Calhoun, pers. comm. 2003b). The Miami blue is also reported to use peacock flower (*Caesalpinia pulcherrima*) (Matteson 1930, pp. 13–14; Calhoun *et al.* 2002, p. 18), a widely cultivated exotic that occurs in disturbed uplands and gardens (Gann *et al.* 2001–2010, p. 1). Rutkowski (1971, p. 137) and Opler and Krizek (1984, p. 113) reported the use of snowberry. Brewer (1982, p. 22) reported the use of cat's paw blackbead (*Pithecellobium unguis-cati*) on Sanibel Island in Lee County.

Prior to the 1970s, documented host plants for the butterfly were nickerbean and blackbead (J. Calhoun, pers. comm. 2003b). Balloonvine (*Cardiospermum* spp.) was not reported as a host plant until the 1970s, when these plants seemed to have become common in extreme southern Florida (J. Calhoun, pers. comm. 2003b). Subsequently, balloonvine (*Cardiospermum halicacabum*), an exotic species in Florida, was the most frequently reported host plant for Miami blue (*e.g.,* Lenczewski 1980, p. 47; Opler and Krizek 1984, p. 113; Minno and Emmel

1993, p. 134; 1994, p. 647; Calhoun *et al.* 2002, p. 18). However, Carroll and Loye (2006, pp. 13–15) corrected ''the common view that a principal host plant, balloonvine, is an exotic weed.'' They found that published reports of Miami blue larvae on balloonvine all identified the host as *C. halicacabum* and stated that the butterfly was instead dependent upon a declining native *C. corindum* (Carroll and Loye 2006, pp. 14, 23). Bradley (pers. comm. 2002) also confirmed that *C. halicacabum* does not occur in the Keys, noting that the native balloonvine (*C. corindum*) is relatively common and widespread in the Keys and has been commonly mistaken as *C. halicacabum* in the Keys and other sites in south Florida.

Calhoun (pers. comm. 2003b) suggested that the Miami blue may simply utilize whatever acceptable hosts are available under suitable conditions. According to Calhoun (pers. comm. 2003b), a review of the historical range of the butterfly and its host plants suggests balloonvine was a more recent larval host plant and temporarily surpassed nickerbean as the primary host plant. As native coastal habitats were destroyed, balloonvine readily invaded disturbed environments, and the Miami blue used what was most commonly available. Minno (pers. comm. 2010) suggested that the Miami blue used balloonvine on Key Largo and Plantation Key extensively in the 1970s through the 1990s, noting that nickerbean, blackbead, and perhaps other hosts were also probably used, but not documented.

The Miami blue metapopulation (series of small populations that have some level of interaction) at KWNWR was found to rely upon Florida Keys blackbead as the singular host plant (Cannon *et al.* 2007, p. 1; Cannon *et al.* 2010, pp. 851–852). Blackbead was also an important nectar plant when in flower. High counts of Miami blues at KWNWR were generally associated with the emergence of flowers and new leaves on blackbead (Cannon *et al.* 2007, pp. 14–15; Cannon *et al.* 2010, pp. 851–852). All sites that supported Miami blues contained blackbead (Cannon *et al.* 2007, p. 6; Cannon *et al.* 2010, p. 851). Limited abundance of blackbead within select areas of KWNWR was thought to limit abundance of the Miami blue (Cannon *et al.* 2007, p. 10; Cannon *et al.* 2010, p. 850). At BHSP, the Miami blue was closely associated with gray nickerbean, but also uses blackbead (M. Minno, pers. comm. 2010). In KWNWR, gray nickerbean was rare, with only a few small plants on Boca Grande Key and the Marquesas Keys (Cannon *et al.* 2010, p. 851).

Adult Miami blues have been reported to feed on a wide variety of nectar sources including Spanish needles (*Bidens alba*), Leavenworth's tickseed (*Coreopsis leavenworthi*), scorpionstail (*Heliotropium angiospermum*), turkey tangle fogfruit or capeweed (*Lippia nodiflora*), buttonsage (*Lantana involucrata*), snow squarestem (*Melanthera nivea* [*M. aspera*]), blackbead, Brazilian pepper (*Schinus terebinthifolius*), false buttonweed (*Spermacoce* spp.), and seaside heliotrope (*Heliotropium curassavicum*) (Pyle 1981, p. 489; Opler and Krizek 1984, p. 113; Minno and Emmel 1993, p. 135; Emmel and Daniels 2004, p. 12). Emmel and Daniels (2004, p. 12) reported that the Miami blue uses a variety of flowering plant species in the Boraginaceae, Asteraceae, Fabaceae, Polygonaceae, and Verbenaceae families for nectar. Cannon *et al.* (2010, p. 851) found the butterfly uses nine plant species as nectar sources within KWNWR, including: Blackbead, snow squarestem, coastal searocket (*Cakile lanceolata*), black torch (*Erithalis fruticosa*), yellow joyweed (*Alternanthera flavescens*), bay cedar (*Suriana maritime*), sea lavender (*Argusia gnaphalodes*), seaside heliotrope, and sea purslane (*Sesuvium portulacastrum*).

Nectar sources must be near potential host plants since the butterflies are sedentary and may not travel between patches of host and nectar sources (Emmel and Daniels 2004, p. 13). This may help explain the absence of the Miami blue from areas in which host plants are abundant and nectar sources are limited (J. Calhoun, pers. comm. 2003b). Emmel and Daniels (2004, p. 13) argued that it is potentially critical that sufficient available adult nectar sources be directly adjacent to host patches and also important that a range of potential nectar sources be available in the event one plant species goes out of flower or is adversely impacted by environmental factors. Cannon *et al.* (2010, p. 851) suggested that the growth stage of blackbead, coupled with abundant nectar from herbaceous plants, likely influenced Miami blue abundance; the highest counts occurred when blackbead was flowering profusely and producing new leaves.

Historical Distribution

The Miami blue butterfly (*Cyclargus thomasi bethunebakeri*) is endemic to Florida with additional subspecies occurring in the Bahamas, Puerto Rico, and Hispaniola (Smith *et al.* 1994, p. 129; Hernandez 2004, p. 100; Saarinen 2009, pp. 18–19, 28). Field guides and other sources differ as to whether *C. thomasi bethunebakeri* occurs in the Bahamas. Clench (1963, p. 250), who collected butterflies extensively in the West Indies, indicated that the subspecies occurred only in Florida. Riley (1975, p. 110) and Calhoun *et al.* (2002, p. 13) indicated that the Miami blue of Florida rarely occurs as a stray in the Bahamas. Minno and Emmel (1993, p. 134; 1994, p. 647) and Calhoun (1997, p. 46) considered the Miami blue to occur only in Florida (endemic to Florida, with other subspecies found in the Bahamas and Greater Antilles). Smith *et al.* (1994, p. 129) indicated that the Miami blue occurs in southern Florida, but noted it has been recorded from the Bimini Islands in the Bahamas. However, in a recent comprehensive study of museum specimens, Saarinen (2009, p. 28) found no specimens in current museum holdings to verify this. Overall, the majority of historical records pertaining to this subspecies' distribution are dominated by Florida occurrences, with any peripheral occurrences in the Bahamas possibly being ephemeral in nature.

Although information on distribution is somewhat limited, it is clear that the historical range of the Miami blue has been significantly reduced. The type series (*i.e.,* the original set of specimens on which the description of the species is based) contains specimens ranging from Key West up the east coast to Volusia County (Comstock and Huntington 1943, p. 98; J. Calhoun, pers. comm., 2003b). Opler and Krizek (1984, p. 112) showed its historical range as being approximately from Tampa Bay and Cape Canaveral southward along the coasts and through the Keys. It has also been collected in the Dry Tortugas (Forbes 1941, pp. 147–148; Kimball 1965, p. 49; Glassberg and Salvato 2000, p. 2). Lenczewski (1980, p. 47) noted that it was reported as extremely common in the Miami area in the 1930s and 1940s. Calhoun *et al.* (2002, p. 17) placed the historical limits of the subspecies' northern distribution at Hillsborough and Volusia Counties, extending southward along the coasts to the Marquesas Keys (west of Key West).

The Miami blue was most common on the southern mainland and the Keys, especially Key Largo and Big Pine Key (Calhoun *et al.* 2002, p. 17) and other larger keys with hardwood hammock (Monroe County) (M. Minno, pers. comm. 2010). The subspecies was recorded on at least 10 islands of the Keys (Adams Key, Big Pine Key, Elliott Key, Geiger Key, Key Largo, Lignumvitae Key, Old Rhodes Key, Plantation Key, Stock Island, Sugarloaf Key) (Minno and Emmel 1993, p. 134). On the Gulf coast, it was reportedly

more localized and tended to occur on more southerly barrier islands (J. Calhoun, pers. comm. 2003b). According to Calhoun *et al.* (2002, p. 17), the Miami blue occupied areas on the barrier islands of Sanibel, Marco, and Chokoloskee, along the west coast into the 1980s (based upon Brewer 1982, p. 22; Minno and Emmel 1994, pp. 647–648). Lenczewski (1980, p. 47) reported that the Miami blue historically occurred at Chokoloskee, Royal Palm (Miami-Dade County), and Flamingo (Monroe County) within ENP, but that the subspecies has not been observed in ENP since 1972.

Based upon examination of specimens from museum collections (N=689), Saarinen (2009, pp. 42, 55–57) found a large, primarily coastal, geographic distribution for the butterfly. Most specimens from an 11-county area from 1900 to 1990 were collected in Miami-Dade and Monroe Counties (Saarinen 2009, pp. 42, 58). Records from Miami-Dade County (N=212) were most numerous in the 1930s and 1940s; records from Monroe County (N=387) (including all of the Florida Keys) were most numerous in the 1970s (Saarinen 2009, pp. 42, 58). Saarinen (2009, p. 47) was not able to quantify issues of collector bias and noted that collecting restrictions, inaccessibility of certain islands, and targeted interest in certain areas, may have been factors influencing the relative abundance (and distribution) of specimens collected. For example, it is unclear whether Key Largo represented a ''central hotspot,'' a spot simply heavily visited by lepidopterists, or both (Saarinen 2009, p. 47). Still, it is clear that specimens were common in museum collections from the early 1900s to the 1980s, suggesting that the butterfly was abundant, at least in local patches, during this time period (Saarinen 2009, p. 46). This is consistent with the work of Carroll and Loye (2006, pp. 15–18), who, in a compilation of location data for specimens (N=209), found that most collections were from the Upper Keys; those from peripheral sites were generally less recent and only single specimens. Examination of museum records further verified the Miami blue's wide distribution in southern Florida through time (Carroll and Loye 2006, pp. 15–18; Saarinen 2009, p. 46).

By the 1990s, very few Miami blue populations were known to persist, and the butterfly had not been seen on the western Florida coast since 1990, where it was last recorded on Sanibel Island (Calhoun *et al.* 2002, p. 17). One of the few verifiable reports (prior to rediscovery in 1999) was on Big Pine Key in March 1992 (Glassberg *et al.* 2000, p. 79; Glassberg and Salvato 2000, p. 1; Calhoun *et al.* 2002, p. 17). Following Hurricane Andrew in 1992, there were a few unsupported reports from Key Largo and Big Pine Key and the southeastern Florida mainland from approximately 1993 to 1998 (Glassberg and Salvato 2000, p. 3; Calhoun *et al.* 2002, p. 17). In 1996, four adult Miami blues were observed in the area of Dagny Johnson Key Largo Hammock Botanical State Park (DJSP) by Linda and Byrum Cooper (L. Cooper, listowner of LEPSrUS Web site, pers. comm. 2002; Calhoun *et al.* 2002, p. 17). However, a habitat restoration project apparently eradicated that population (L. Cooper, pers. comm. as cited in Calhoun *et al.* 2002, p. 17).

The Miami blue was presumed to be extirpated until its rediscovery in 1999 by Jane Ruffin, who observed approximately 50 individuals at a site in the lower Keys (Bahia Honda) (Ruffin and Glassberg 2000, p. 3; Calhoun *et al.* 2002, p. 17). Additional individuals were located at a site within 0.5 mile (0.8 kilometers (km)) of where Ruffin had discovered the population (Glassberg and Salvato 2000, p. 3). Glassberg and Salvato (2000, p. 1) stated that more than 15 highly competent butterfly enthusiasts had failed to find any populations of the Miami blue from 1992 until 1999, despite more than 1,000 hours of search effort in all sites known to harbor former colonies and other potential sites throughout south Florida and the Keys. In May 2001, there was an additional sighting by Richard Gillmore of a single Miami blue in the hammocks in North Key Largo (Calhoun *et al.* 2002, p. 17; J. Calhoun, pers. comm. 2003b).

Current Distribution

Numerous searches for the Miami blue have occurred in the past decade by various parties. The Miami blue was not observed on 105 survey dates at 11 locations on the southern Florida mainland from 1990 to 2002 (Edwards and Glassberg 2002, p. 4). In the Keys, surveys during the same time period also produced no sightings of the Miami blue at 29 locations for 224 survey dates (Edwards and Glassberg 2002, p. 4). In 2002, the Service initiated a status survey, contracting researchers at the UF, to search areas within the subspecies' historical range, concentrating on the extreme south Florida mainland and throughout the Keys. Despite surveys at 45 sites during 2002–2003, adults or immature stages were found only at a single site near BHSP on West Summerland Key (Emmel and Daniels 2004, pp. 3–6; 21–25) (approximately 1.9 miles [3 km] west of BHSP). The Miami blue was not found on the mainland, including Fakahatchee Strand, Charles Deering Estate, ENP, Marco Island, or Chokoloskee (Emmel and Daniels 2004, pp. 5–6, 25). It was also absent from the following locations in the Keys: Elliott, Old Rhodes, Totten, and Adams Key in Biscayne National Park (BNP) and Key Largo and Plantation Key in the Upper Keys; Lignumvitae, Lower Matecumbe, Indian, and Long Keys in the Middle Keys; and Little Duck, Missouri, Ohio, No Name, Big Pine, Ramrod, Little Torch, Wahoo, Cudjoe, Sugarloaf, and Stock Island in the Lower Keys (Emmel and Daniels 2004, pp. 3–5; 21–24).

Based upon an additional independent survey in 2002, the Miami blue was also not found at 18 historical locations where it had previously been observed or collected in Monroe, Broward, Miami-Dade, and Collier Counties into the 1980s (D. Fine, unpub. data, pers. comm. 2002). These were: Cactus Hammock (Big Pine Key), County Road (Big Pine Key), Grassy Key, John Pennekamp Coral Reef State Park, Windley Key, Crawl Key, Stock Island, Plantation Key, and Lower Matecumbe Key in Monroe County; Hugh Taylor Birch State Park and Coral Springs in Broward County; Redlands, IFAS Station, Frog City, and Card Sound Road in Miami-Dade County; Marco Island and Fakahatchee Strand State Preserve in Collier County.

In 2003, the Service contracted the North American Butterfly Association (NABA) to perform systematic surveys in south Florida and the Keys to identify all sites at which 21 targeted butterflies, including the Miami blue, could be found. Despite considerable survey effort (*i.e.,* 187 surveys performed), the Miami blue was not located at any location except Bahia Honda (NABA 2005, pp. 1–7). In addition, the Miami blue was not present within the J.N. Ding Darling National Wildlife Refuge or on Sanibel-Captiva Conservation Foundation properties (both on Sanibel Island), during annual surveys conducted from 1998 to 2009 (M. Salvato, pers. comm. 2011a). Monthly or quarterly surveys of Big Pine Key, conducted from 1997 to 2010, failed to locate Miami blues (M. Salvato, pers. comm. 2011b). Minno and Minno (2009, pp. 77, 123–193) failed to locate the subspecies during butterfly surveys throughout the Keys conducted from August 2006 to July 2009.

Although two fifth-instar larvae were documented on West Summerland Key in November 2003, on unprotected land approximately 2.2 miles (3.6 km) west of BHSP (Emmel and Daniels 2004, pp. 3, 24, 26), none have been seen there

since. According to Daniels (pers. comm. 2003c), an adult (or adults) was likely blown to this key from Bahia Honda by strong winds or was at least partially assisted by the wind.

In November 2006, Miami blues were discovered on islands within KWNWR (Cannon *et al.* 2007, p. 2). This discovery was significant because it was a new, geographically separate population, and doubled the known number of metapopulations remaining (to 2). During the period from 1999 to 2009, the Miami blue was consistently found at BHSP (Ruffin and Glassberg 2000, p. 29; Edwards and Glassberg 2002, p. 9; Emmel and Daniels 2009, p. 4; Daniels 2009, p. 3). However, this population may now be extirpated. This leaves the islands within KWNWR as the only known locations of the subspecies.

Overall, the Miami blue has undergone a substantial reduction in its historical range, with an estimated > 99 percent decline in area occupied (Florida Fish and Wildlife Conservation Commission [FWC] 2010, p. 11). In 2009, metapopulations existed at two main locations: BHSP and KWNWR, roughly 50 miles (80 km) apart. The metapopulation at BHSP is now possibly extirpated with the last adult documented in July 2010 (A. Edwards, Florida Atlantic University, pers. comm. 2011). It is feasible that additional occurrences exist in the Keys, but these may be ephemeral and low in population number (Saarinen 2009, p. 143). In 2010, the Service funded an additional study with UF to search remote areas for possible presence; this study is now underway. The subspecies was not located in limited surveys conducted in the Cape Sable area of ENP in March 2011 (P. Halupa, pers. obs. 2011; M. Minno, pers. comm. 2011).

Bahia Honda State Park

Bahia Honda is a small island at the east end of the lower Keys, approximately 7.0 miles (11.3 km) west of Vaca Key (Marathon) and 2.0 miles (3.2 km) east of Big Pine Key. The amount of suitable habitat (habitat supporting larval host plants and adjacent adult nectar sources) within BHSP is approximately 1.5 acres (0.6 hectares [ha]). Of the suitable habitat available at BHSP, approximately 85 percent (1.3 acres [0.5 ha]) was occupied by the Miami blue (Emmel and Daniels 2004, p. 12). The metapopulation comprised 13 distinct colonies, with the core comprising 3 or 4 colonies, located at the southwest end (Emmel and Daniels 2004, pp. 6, 27). This area contained the largest contiguous patch of host plants, although the size was estimated to be 0.8 acres (0.32 ha) (Emmel and Daniels 2004, p. 12). The second largest colony occurred at the opposite (northeast) end of BHSP and was based solely on the presence of two to three small, isolated patches of nickerbean directly adjacent to an existing nature trail and parking area (Emmel and Daniels 2004, p. 6). The remaining colonies were isolated, with most occurring in close proximity to the main park road (Emmel and Daniels 2004, pp. 13, 27). Isolated colonies used very small patches of nickerbean (*e.g.,* one was estimated to be 10 by 10 feet [3 by 3 meters]) (Emmel and Daniels 2003, p. 3), often adjacent to paved roads (Emmel and Daniels 2004, pp. 6, 12, 27).

Key West National Wildlife Refuge

Efforts to define the limits of the KWNWR metapopulation were conducted from November 2006 to July 2007 (Cannon *et al.* 2007, pp. 10–11; 2010, p. 849). Miami blues were found in seven sites on five islands in the Marquesas Keys, approximately 12.2 miles (19.6 km) west of Key West, and on Boca Grande Key, approximately 11.8 miles (19 km) west of Key West (6.3 miles [10.1 km] east-southeast of the Marquesas Keys) (Cannon *et al.* 2007, pp. 1–24; 2010, pp. 847–848). The eight sites occupied by Miami blues ranged from approximately 0.25 to 37.10 acres (0.1–15.0 ha) (Cannon *et al.* 2007, p. 6; 2010, p. 848). The combined amount of upland habitat of occupied sites (within KWNWR) was roughly 59 acres (23.8 ha) (Cannon *et al.* 2010, p. 848). Miami blues were not found on Woman Key, approximately 10.1 miles (16.2 km) west of Key West, or Man Key, approximately 6.8 miles (10.9 km) west of Key West; these sites had abundant nectar plants, but few host plants (Cannon *et al.* 2007, pp. 5, 12; 2010, pp. 848–850). In addition, the Miami blue was not found on six islands in the Great White Heron National Wildlife Refuge (GWHNWR); these sites contained limited amounts of, or were lacking, either host plants or nectar plants (Cannon *et al.* 2007, pp. 5, 12; 2010, pp. 847, 850–851).

In a separate study, Daniels also found four of the sites previously occupied within KWNWR to support the Miami blue variously from 2008 to 2010 (Emmel and Daniels 2008, pp. 7–10; 2009, pp. 9–13; Daniels 2008, pp. 1–6; Daniels 2010, pp. 3–5; J. Daniels, pers. comm. 2010a). Survey effort, however, was limited. Some previously occupied islands were not searched, and no new occupied areas were identified.

Followup presence and absence surveys by KWNWR in 2009 showed that the Miami blue was present on two sites in the Marquesas, but not on Boca Grande (P. Cannon, pers. comm. 2010a). In 2010, similar surveys indicated that the Miami blue was present on Boca Grande and one site in the Marquesas; it was still not located on Woman Key (P. Cannon, pers. comm. 2010b; T. Wilmers, pers. comm. 2010a). In March and April 2011, Miami blues were still present on five of seven sites where previously found in KWNWR (T. Wilmers pers. comm. 2011a; N. Haddad, North Carolina State University [NCSU], pers. comm. 2011).

Reintroductions

Although Miami blue butterflies were successfully reared in captivity, reintroductions have been unsuccessful. Since 2004, approximately 7,140 individuals have been released (J. Daniels pers. comm. as cited in FWC 2010, p. 8). Between August 2007 and November 2008, reintroduction events were carried out at BNP and DJSP 12 times resulting in the release of 3,553 individuals (276 adults/3,277 larvae) (Emmel and Daniels 2009, p. 4). Monitoring efforts have been limited; 19 days were spent monitoring reintroduction sites (Emmel and Daniels 2009, p. 4). To date, no evidence of colony establishment has been found (Emmel and Daniels 2009, p. 4). It is not clear why reintroductions were unsuccessful. Numerous factors may have been involved (*e.g.,* predation, parasitism, insufficient host plant or larval sources). Due to limited resources and other constraints, standard protocols were not employed to help identify factors that may have influenced reintroduction success. Research with surrogate species may be helpful to better establish protocols and refine techniques for the Miami blue prior to future propagation and reintroduction efforts.

Population Estimates and Status

Bahia Honda State Park metapopulation

Prior to its apparent extirpation, the metapopulation at BHSP was monitored regularly from 2002 to 2009 (Emmel and Daniels 2009, p. 4). Pollard transects at the south-end colony site (largest) yielded annual peak counts of approximately 175, 84, 112, and 132, from 2002 to 2005 (prior to hurricanes), and 82, 81, 120, and 38, from 2006 to 2009 (Emmel and Daniels 2009, p. 4). From October 2002 to September 2003, abundance estimates using mark-release-recapture (Schnabel method) ranged from a low of 19.7 in February 2003 to a high of 114.5 in June 2003

(Emmel and Daniels 2004, p. 9). Counts ranged from 6 to 100 adults during surveys by the NABA conducted from February 2004 to January 2005 (NABA 2005, unpub. data). Monthly (2003 to 2006) or bimonthly (2007) monitoring by Salvato (pers. comm. 2011c) at the south-end colony produced annual average counts of 129, 58, 46, 6, and 8, respectively, from 2003 to 2007. Salvato (pers. comm. 2011c) observed 21, 10, and 0 Miami blues from 2008 to 2010, respectively, based on limited surveys.

In general, early (dry) season numbers were low in most years and were attributed to a persistent south Florida drought (Emmel and Daniels 2009, p. 4). Abundance trends indicated that there was a marked decrease in the number of individuals during the winter months (November to February) (Emmel and Daniels 2004, p. 9; 2009, p. 4). Higher abundances during the summer wet season may relate to production of a large quantity of new terminal growth on the larval host plants (nickerbean) and availability of nectar sources from spring rainfall (Emmel and Daniels 2004, pp. 9–11).

Four hurricanes affected habitat at BHSP in 2005, resulting in reduced abundance of Miami blue following subsequent storms that continued throughout 2006 (Salvato and Salvato 2007, p. 160). Although no quantitative measures were taken, a significant portion of the nickerbean in the survey area (> 35 percent of the area of available habitat) was damaged by the storms; roughly 60–80 percent of the vegetation on the southern side of the island was visually estimated to have been heavily damaged, including large stands of host and nectar plants (Salvato and Salvato 2007, p. 156). Despite a decline in abundance after the hurricanes, the Miami blue had appeared to rebound toward pre-storm abundance by the summer months of 2007 (Salvato and Salvato 2007, p. 160). However, peaks remained below those found prior to the 2005 hurricane season (Emmel and Daniels 2009, p. 4).

Although it is unclear when iguanas became established at BHSP, effects of herbivory on the host plant were apparent by late 2008 or early 2009 (Emmel and Daniels 2009, p. 4; Daniels 2009, p. 5; P. Cannon, pers. comm. 2009; A. Edwards, pers. comm. 2009; P. Hughes, pers. comm. 2009; M. Salvato, pers. comm. 2010a). Defoliation was mostly limited to the south-end colony site (Emmel and Daniels 2009, p. 4). Cooperative eradication efforts to address this problem began in 2009 and continue today; however, iguanas continue to impact terminal nickerbean growth (see Summary of Factors Affecting the Species) (Emmel and Daniels 2009, p. 4; Daniels 2009, p. 5; E. Kiefer, BHSP, pers. comm. 2011a). From 2006 through 2009, adult or immature Miami blues were found at several colony sites; however, one colony became relatively unproductive in 2005 (pre-hurricane) (Emmel and Daniels 2009, p. 4). No Miami blues have been found at any roadway nickerbean patches within BHSP since 2005, prior to the advent of profound iguana herbivory and damages from hurricanes (Emmel and Daniels 2009, p. 4).

The metapopulation has diminished in recent years likely due to the combined effects of small population size, drought, cold temperatures, and iguanas (see Summary of Factors Affecting the Species). In 2010, few Miami blues were observed at BHSP. On January 23, 2010, a photograph was taken of a pair of Miami blues mating (Olle 2010, p. 5). On February 12, 2010, a photograph was taken of a single adult (C. DeWitt, pers. comm. 2011). In March 2010, Daniels found one larva, but no adults (D. Cook, FWC, pers. comm. 2010a). In July 2010, a single adult was observed and photographed (A. Edwards, pers. comm. 2011). No Miami blue adults have been located during quarterly surveys conducted in 2010 by Salvato (pers. comm. 2010b, 2011c). No Miami blue butterflies of any life stage were subsequently seen despite frequent searches (D. Cook, pers. comm. 2010a; P. Cannon, pers. comm. 2010c, 2010d, 2010e, 2010f; M. Salvato, pers. comm. 2011c, 2011d; Jim Duquesnel, BHSP, pers. comm. 2011a, 2011b).

Key West National Wildlife Refuge Metapopulation(s)

The metapopulation at KWNWR yielded counts of several hundred, at various times, in 2006–2007. Checklist counting was used during surveys conducted between November 2006 and July 2007 to document the distribution and abundance of Miami blues (Cannon *et al.* 2007, p. 5; 2010, p. 848). Within the seven sites occupied in the Marquesas Keys, the highest counts ranged from 8 to 521 depending upon site and sampling date (Cannon *et al.* 2007, p. 7; 2010, p. 848). The highest count on Boca Grande was 441 in February 2007 (Cannon *et al.* 2007, p. 7; 2010, p. 848). Highest counts occurred when blackbead flowered profusely and produced new leaves (Cannon *et al.* 2010, p. 851). In March and April, blackbead was observed to yield little new growth and no flowering, and oviposition by Miami blues was not observed (Cannon *et al.* 2007, p. 8). Partial searches on two islands in May and June revealed few Miami blues; little new leaf growth and no flowering of blackbead was observed at these locations after February 2007 (Cannon *et al.* 2010, p. 850). Seasonality observed on KWNWR was different than that described for the BHSP metapopulation (above). Hurricane Wilma (October 2005) heavily damaged or killed blackbead stands at most sites, but it also likely enhanced foraging habitat, if only temporarily, on select islands within the KWNWR (Cannon *et al.* 2007, p. 10; 2010, p. 851) (see Summary of Factors Affecting the Species).

Periodic surveys at KWNWR in 2008 and 2009 suggested lower levels of abundance, based upon limited effort (Emmel and Daniels 2008, pp. 7–10; 2009, pp. 9–13). In February 2008, researchers recorded 3 adults on Boca Grande and a total of 32 adults at two islands within the Marquesas; lack of rainfall resulted in very limited adult nectar sources and limited new growth of larval host (Emmel and Daniels 2008, pp. 7–8). In April 2008, one adult was recorded on Boca Grande; one adult was also recorded at another island (Emmel and Daniels 2008, p. 8). In June 2008, no adults were located on Boca Grande, and a total of 27 were recorded from two other islands (Emmel and Daniels 2008, p. 9). In August 2008, no adults were found at Boca Grande, and five adults were recorded at another island (Emmel and Daniels 2008, p. 10). In March 2009, no adults were recorded on Boca Grande; habitat conditions were deemed very poor, with limited new host growth and available nectar resources (Emmel and Daniels 2009, p. 12). In April 2009, researchers found a total of 22 adults from two islands within the Marquesas (Emmel and Daniels 2009, p. 13).

Based upon limited data and observations, the Miami blue persisted on various islands within the KWNWR in 2010. From April through July 2010, the Miami blue was observed on 5 of 10 dates at one location within the Marquesas, although in limited numbers during brief surveys (T. Wilmers, pers. comm. 2010b). On July 28, 2010, researchers recorded 19 adults from three islands within the Marquesas, in limited surveys; another 25 adults were recorded on Boca Grande in less than 1 hour of survey work (J. Daniels, pers. comm. 2010a). On September 30, 2010, dozens of Miami blues were observed on Boca Grande; this may have represented an actual population size in the hundreds (N. Haddad, pers. comm. 2010). On November 24, 2010, researchers positively identified 48 Miami blue adults on Boca Grande in less than 3 hours of surveys, noting that assessment was difficult due to the

many hundreds or possibly thousands of cassius blues, which were also present (P. Cannon, pers. comm. 2010b; T. Wilmers, pers. comm. 2010a). In March and April 2011, researchers observed Miami blue adults at five sites within KWNWR in numbers similar to those reported above (N. Haddad, pers. comm. 2011). In July 2011, fewer adults were observed (P. Hughes, pers. comm. 2011).

At this time, it is unclear what the size of the metapopulation at KWNWR is or its dynamics. However, available data (given above) suggest wide fluctuations of adults within and between years and sites. The frequency of dispersal between islands is also not known (Cannon *et al.* 2010, p. 852). Due to the distance between the Marquesas and Boca Grande (*i.e.,* about 7 miles [11 km]) and the species' limited dispersal capabilities, it is possible that two (or more) distinct metapopulations exist within KWNWR (J. Daniels, pers. comm. 2010b). In September 2010, the Service initiated a new study with researchers from NCSU to conduct a comprehensive examination of potential habitat within KWNWR and GWHNWR, quantify current distribution and habitat use, and develop a monitoring protocol to estimate detectability, abundance, and occupancy parameters.

Gene Flow and Genetic Diversity Within Contemporary Populations

Saarinen (2009, pp. 15, 29–33, 40, 44) and Saarinen *et al.* (2009b, pp. 242–244) examined 12 polymorphic microsatellite loci (noncoding regions of chromosomes) to assess molecular diversity and gene flow of wild and captive-reared Miami blue butterflies; also, one microsatellite locus was successfully amplified from a subset of the museum specimens. Although results from historical specimens should be interpreted with caution (due both to small sample size and the single microsatellite locus), Saarinen (2009, pp. 15, 50–51) reported some loss of diversity in the contemporary populations, though less than had been expected. Even with small sample sizes, historical populations were significantly more diverse (with generally higher effective numbers of alleles and observed levels of heterozygosity) than BHSP; KWNWR population values were between historical values and BHSP values (Saarinen 2009, pp. 44–46).

Both historical and contemporary populations showed evidence of a metapopulation structure with interacting subcolonies (E.V. Saarinen and J.C. Daniels, unpub. data as cited in Saarinen 2009, p. 49). However, the metapopulations at BHSP and KWNWR are separated by a distance of more than 43 miles (70 km). Given the Miami blue's poor dispersal capabilities (E.V. Saarinen and J.C. Daniels, unpub. data as cited in Saarinen 2009, p. 22), it is highly unlikely that they interacted. Saarinen's work showed no gene flow and a clear distinction between the BHSP and KWNWR metapopulations (Saarinen 2009, pp. 36, 74, 89) (see Summary of Factors Affecting the Species).

Studies addressing molecular diversity at BHSP showed the effective number of alleles remained relatively constant over time, at both a monthly (generational) and annual scale (Saarinen 2009, pp. 71, 84). Allelic (gene) richness was also stable over time in BHSP, with values ranging from 2.988 to 3.121 when averaged across the 12 microsatellite loci from September 2005 to October 2006. These values were lower than those in KWNWR [3.790] (Saarinen 2009, p. 71). However, data showed that the BHSP metapopulation retained an adequate amount of genetic diversity to maintain the population in 2005 and 2006, despite perceived changes in overall population size (Saarinen 2009, p. 77). No significant evidence of a recent genetic bottleneck was found in the BHSP generations analyzed, however, there may have been a previous bottleneck that was undetectable with methods used (Saarinen 2009, pp. 72, 85, 141).

To explore the level of gene flow and connectivity between discrete habitat patches at BHSP, Saarinen (2009, pp. 64–65) conducted analyses at several spatial scales, analyzing BHSP as a single population (with no subdivision), as individual colonies occupying discrete habitat patches (as several groups acting in a metapopulation structure), and as a division of clumped colonies versus other, more spatially distant colonies. Analyses of microsatellite frequencies were also used to assess gene flow between habitat patches (Saarinen 2009, p. 72). While some subpopulations were well linked, others showed more division (Saarinen 2009, p. 73). High levels of gene flow (and relatively little differentiation) were apparent even between distant habitat patches on BHSP, and the smaller patches, such as those along the Main Road, appeared to be important links in maintaining connectivity (Saarinen 2009, pp. 78, 141). Overall, gene flow between habitat patches on BHSP was considered crucial to maintain genetic diversity and imperative for the Miami blue's long-term persistence at this location (Saarinen 2009, p. 141).

The metapopulation structure on KWNWR is more extensive than that which occurred at BHSP (Saarinen 2009, p. 49). Due to small sample sizes from Boca Grande, only samples from the Marquesas Keys were used for genetic analysis of KWNWR, and results were limited (Saarinen 2009, pp. 66, 72). Overall, this metapopulation was found to have higher genetic diversity (mean observed heterozygosity of 51 percent versus 39.5 percent) than the BHSP population (Saarinen 2009, p. 49). Allelic richness (3.790 in February 2008) was also higher in KWNWR (Saarinen 2009, pp. 71, 75). Accordingly, KWNWR is a particularly important source of variation to be considered for future conservation efforts for this taxon (Saarinen 2009, pp. 71, 75), especially if this is the only extant metapopulation(s) remaining. The KWNWR metapopulation showed signs of a bottleneck and may support the hypothesis that it is a newly founded population (Saarinen 2009, pp. 76, 141). Further work is needed to better understand the metapopulation dynamics and genetic implications in this population.

Previous Federal Action

On May 22, 1984, we published a Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21664), which included the Miami blue butterfly (*Hemiargus thomasi bethune-bakeri*) as a category 2 candidate species for possible future listing as threatened or endangered. Category 2 candidates were those taxa for which information contained in our files indicated that listing may be appropriate, but for which additional data were needed to support a listing proposal. In a January 6, 1989, Animal Notice of Review (54 FR 572), the Miami blue butterfly continued as a category 2 candidate, with a name change from *bethune-bakeri* to *bethunebakeri.* On November 21, 1991, the Miami blue was downgraded from a category 2 to category 3C species in an Animal Candidate Review for Listing as Endangered or Threatened Species (56 FR 58830), characterized as having an unknown trend (meaning additional survey work was required to determine the current trend). Category 3C species were those taxa that had proved to be more abundant or widespread than previously believed and/or those that were not subject to any identifiable threat. In 1996, Category 3 species were removed from the candidate list (61 FR 7596).

On June 15, 2000, we received a petition from the NABA and Mark Salvato to emergency list the Miami

blue butterfly (*Hemiargus thomasi bethunebakeri*) as endangered with critical habitat pursuant to the Act. The petition cited habitat loss and fragmentation, influence of mosquito control chemicals, unethical butterfly collection, and human-caused changes to habitat occupied by the subspecies' only known population.

On August 29, 2001, the Department of the Interior reached an agreement with several conservation organizations regarding a number of listing actions that had been delayed by court-ordered critical habitat designations and listing actions for other species. That agreement was subsequently approved by the U.S. District Court for the District of Columbia. Under the agreement, we and the conservation organizations agreed to significantly extend the actions on the other species, thereby making funds available for a number of listing actions judged to be higher priority. Those higher priority listing actions included the 90-day finding for the petition to list the Miami blue butterfly.

On January 3, 2002 (67 FR 280), we announced our 90-day finding for the petition to list the Miami blue, initiated a status review, and sought data and information from the public. In this finding, we indicated the Miami blue may be in danger of extirpation. However, we did not believe the threats to be so great that extirpation was imminent, requiring us to provide emergency protection to the butterfly through our emergency listing provisions. We indicated that we could issue an emergency rule when an immediate threat posed a significant risk to the well-being of the subspecies.

On May 11, 2005, we recognized the Miami blue butterfly as a Federal candidate subspecies in our annual Candidate Notice of Review (70 FR 24872). This action constituted a 12-month finding for the subspecies in which it was determined that the subspecies was warranted but precluded for listing by other higher priority listing actions. On November 9, 2009, in our annual Candidate Notice of Review (74 FR 57809), we changed the Listing Priority Number (LPN) for the Miami blue from 6 to 3 due to increased and more immediate threats.

On August 10, 2010, the Service received a renewed petition from the NABA for emergency listing of the Miami blue butterfly as endangered. This petition stated that the entire remaining population is in significant and immediate danger because it exists in a single location and is subject to hurricanes, iguanas, and human impacts given that the area is remote and difficult to patrol. On January 11, 2011, the Service received a separate petition for emergency listing of the Miami blue butterfly with critical habitat from the Center for Biological Diversity.

The Miami blue butterfly is currently a Federal candidate (LPN of 3) and State-threatened subspecies.

The Service's decision to emergency list the Miami blue butterfly resulted from our careful review of the status of the subspecies and the threats it faces. We based this decision on information in our files or otherwise available to us (including the results of recent status surveys) as well as information contained in the original petition (2000), the renewed petition (2010), the new petition (2011), and information referenced in the petitions.

The proposed rule to list the Miami blue butterfly as endangered is published concurrently with this emergency rule and found in this issue of the **Federal Register** in Proposed Rules.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may determine a species to be endangered or threatened due to one or more of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Miami blue has experienced substantial destruction, modification, and curtailment of its habitat and range (see Background, above), with an estimated > 99 percent decline in area occupied (FWC 2010, p. 11). Although many factors likely contributed to its decline, some of which may have operated synergistically, habitat loss, degradation, and fragmentation are undoubtedly major forces that contribute to its imperilment (Calhoun *et al.* 2002, pp. 13–19; Saarinen 2009, p. 36).

Human Population Growth and Development

The geographic range of this butterfly once extended from the Dry Tortugas north along the Florida coasts to about St. Petersburg and Daytona. It was most common on the southern mainland and the Keys, and more localized on the Gulf coast. Examination of museum collections indicated that specimens were common from the early 1900s to the 1980s; the butterfly was widely distributed, existing in a variety of locations in southern Florida for decades (Saarinen 2009, p. 46). However, through time, much of this subspecies' native habitat has been lost, degraded, or fragmented, especially on the mainland, largely from development and urban growth (Lenczewski 1980, p. 47; Minno and Emmel 1994, pp. 647–648; Calhoun *et al.* 2002, p. 18; Carroll and Loye 2006, p. 25).

On the east coast of Florida, the entire coastline in Palm Beach, Broward, and Miami-Dade Counties (as far south as Miami Beach) is densely urban, with only small remnants of native coastal vegetation conserved in fragmented natural areas. Most of the Gulf Coast barrier islands that previously supported the Miami blue, including Marco and Chokoloskee Islands, have experienced intense development pressure and undergone subsequent habitat loss (Calhoun *et al.* 2002, p. 18). In an independent survey of historical sites where the Miami blue had previously been observed or collected, half were found to be developed or no longer supporting host plants in 2002 (D. Fine, unpub. data, pers. comm. 2002).

Significant land use changes have occurred through time in south Florida. Considering political and economic structure and changes, Solecki (2001, pp. 339–356) divided Florida's land-use history into three broad eras: Frontier era (1870–1930), development era (1931–1970), and globalization era (1971–present). Within the development era, Solecki (2001, p. 350) noted that: ''Tremendous change took place from the early 1950s to the early and mid-1970s. Between 1953 and 1973, nearly 5,800 km^2 (28, 997 ha/year) of natural areas were lost to agricultural and urban land uses (Solecki and Walker, 2001).'' During this time, ''an almost continuous strip of urban development became present along the Atlantic coast'' and ''urban land uses became well established in the extreme southeastern part of the region particularly around the cities of Miami and Fort Lauderdale, and along the entire coastline heading northward to West Palm Beach.''

Saarinen (2009, pp. 42, 46) examined museum collections in the context of Solecki's development eras and found that Miami blue records for Miami-Dade County were highest in the 1930s and 1940s, prior to massive land use changes and urbanization. Records from Monroe County (including the Keys) were most numerous in the 1970s (Saarinen 2009, p. 46). Calhoun (pers. comm. 2003b) suggested the butterfly reached peak abundance when balloonvine invaded clearings associated with the construction boom of the 1970s and 1980s in the northern Keys and southern mainland and became available as a suitable host plant. If so, this may have represented a change in primary host plant at a time when the subspecies was beginning to decline due to continued development and destruction of coastal habitat. Saarinen (2009, p. 46) could not correlate decreases in natural land areas with changes in the numbers collected (or abundance), due to several confounding factors (*e.g.,* increased pesticide use, exotic species). Calhoun *et al.* (2002, p. 13) also attributed the butterfly's decline to loss of habitat due to coastal development, but acknowledged that other factors such as succession, tropical storms, and mosquito control also likely exacerbated the decline (see Factor E).

Habitat loss and human population growth in coastal areas on the mainland and the Keys is continuing. Human population in south Florida has increased from less than 20,000 people in 1920 to more than 4.6 million by 1990 (Solecki 2001, p. 345). Monroe County and Miami-Dade County, two areas where the butterfly was historically abundant, have increased from less than 30,000 and 500,000 people in 1950, respectively, to more than 73,000 and 2.5 million in 2009 (*http://quickfacts.census.gov*). All available vacant land in the Keys is projected to be consumed by human population increases (*i.e.,* developed) by 2060, including lands not accessible by automobile (Zwick and Carr 2006, p. 14). Scenarios developed by Massachusetts Institute of Technology (MIT) urban studies and planning department staff (Flaxman and Vargas-Moreno 2010, pp. 3–4) include both trend and doubling population estimates combined with climate change factors (see below) and show significant impacts on remaining conservation lands, including the refuges, within the Keys. While the rate of development in portions of south Florida has slowed in recent years, habitat loss and degradation, especially in desirable coastal areas, continues and is expected to increase.

Although extensive loss and fragmentation of habitat has occurred, significant areas of suitable larval host plants still remain on private and public lands. Results from surveys (2002–2003) within south Florida and the Keys showed that numerous areas still contained host plants (Emmel and Daniels 2004, pp. 3–6). Results from similar surveys in 2007–2009 suggested that 14 of 16 sites on the mainland and 20 of 22 in the Keys contained suitable habitat (Emmel and Daniels 2009, pp. 6–8). Other researchers noted that larval host plants are common in the Keys (Carroll and Loye 2006, p. 24; Minno and Minno 2009, p. 9). A search of The Institute for Regional Conservation's (IRC) database suggests that 79 conservation areas in south Florida contain *Caesalpinia* spp., 39 areas contain *Cardiospermum* spp., and 77 contain *Pithecellobium* spp. (*http://www.regionalconservation.org/ircs/database/search*). With significant areas of host plants still remaining in portions of the butterfly's range, there is potential for additional populations of the Miami blue to exist.

Acute habitat fragmentation has apparently severely diminished the butterfly's ability to repopulate formerly inhabited sites or to successfully locate host plants in new areas (Calhoun *et al.* 2002, p. 18). Although larval host plants remain locally common, the disappearance of core populations and extent of habitat fragmentation may now prevent the subspecies from colonizing new areas (J. Calhoun, pers. comm. 2003b). The Miami blue is sedentary and not known to travel far from pockets of larval host plants and adult nectar sources (J. Calhoun, pers. comm. 2003b; Emmel and Daniels 2004, p. 6, 13). The presence of adult nectar sources proximal to larval host plants is critical to the Miami blue and may help explain its absence from areas that contain high larval host plant abundance but few nectar sources (J. Calhoun, pers. comm. 2003b; Emmel and Daniels 2004, p. 13).

Land Management Practices

Land management practices that remove larval host plants and nectar sources can be a threat to the Miami blue. Some actions on public conservation lands may have negatively affected occupied habitat, but the extent of this impact is not known. For example, the Miami blue had been sighted in DJSP in 1996, but following removal of balloonvine as part of routine land management, no adults were observed (L. Cooper, pers. comm. 2002; J. Calhoun, pers. comm. 2003b; M. Salvato, pers. comm. 2003). In 2001, following the return of balloonvine, a single adult was observed (J. Calhoun, pers. comm. 2003b). Calhoun noted that the silver-banded hairstreak (*Chlorostrymon simaethis*), which also feeds on balloonvine, had also returned to the site. The silver-banded hairstreak has rebounded substantially on northern Key Largo within disturbed areas of DJSP; if any extant Miami blues remain on the island, reestablishment in this area is possible.

Removal of nickerbean as part of trail maintenance and impacts to a tree resulting from placement of a facility may have impacted the south colony at BHSP in 2002 (J. Daniels, pers. comm. 2002a; P. Halupa, pers. obs. 2002). The tree was an apparent assembly area for display by butterflies during courtship (J. Daniels, pers. comm. 2002a). Damage to host plant and nectar sources from trimming and mowing during the dry season and herbivory by iguanas (see Factor E) impacted habitat conditions at BHSP in 2010 (D. Olle, NABA, pers. comm. 2010). More recently, the Florida Department of Environmental Protection (FDEP) has worked to improve habitat conditions at BHSP through plantings, modification of its mowing practices, removal of iguanas, protection of sensitive areas, and other actions (R. Zambrano, FWC, pers. comm. 2010; D. Cook, pers. comm. 2010a, 2010b; Janice Duquesnel, Florida Park Service [FPS], pers. comm. 2010a, 2010b; Jim Duquesnel, pers. comm. 2010, 2011b; E. Kiefer, pers. comm. 2011a).

Maintenance, including pruning of host vegetation along trails and roadsides, use of herbicides, and impacts from other projects could lead to direct mortality in occupied habitats (Emmel and Daniels 2004, p. 14). Habitat previously supporting immature stages of the butterfly on West Summerland Key is subject to periodic mowing for road maintenance by Florida Department of Transportation (FDOT) (J. Daniels, pers. comm. 2003c); the butterfly no longer occurs at this location (Emmel and Daniels 2004, p. 3; 2009, p. 8). Since Miami blues are sedentary with limited dispersal capabilities, alteration of even small habitat patches may be deleterious.

Removal of host plants from conservation lands does not appear to be occurring on any large scales at this time. IRC has conducted extensive plant inventories on conservation lands within south Florida and is not aware of any attempts to eradicate balloonvine and notes that gray nickerbean has only rarely been controlled (*i.e.,* purposefully removed or pruned, followed with

herbicide treatment) (K. Bradley, pers. comm. 2002). Nickerbean is reported to occur in all of the State parks in the Keys. It is not removed, but where it is a safety hazard for visitors such as when overgrowing into trails, it is trimmed (Janice Duquesnel, pers. comm. 2003). Removal of host plants in or near occupied habitat remains a concern, given the subspecies' small population size, isolated occurrences, and limited dispersal capabilities (see Factor E).

Lack of prescribed fire on public lands may have adversely affected the Miami blue through time, but impacts are unclear. In addition to being found within coastal areas and hardwood hammocks, the Miami blue was also known to occur within tropical pinelands, a fire-dependent habitat (Minno and Emmel 1993, p. 134; Calhoun *et al.* 2002, p. 18). Calhoun *et al.* (2002, p. 18) reported that, until the early 1990s, the Miami blue most commonly occurred within pine rocklands on Big Pine Key. In the absence of fire, pine rockland often progresses to hardwood hammock. Lack of fire may have resulted in habitat loss, however, the extent that this condition occurred is unclear and difficult to assess. Since the Miami blue is sedentary, changes in vegetation due to this and other land management practices may have exacerbated the effects of fragmentation.

In summary, a variety of land management practices on public lands (*e.g.,* removal of host plants, mowing of nectar sources, and lack of prescribed fires) may have adversely affected the Miami blue and its habitat historically and continues to do so currently.

Climate Change and Sea Level Rise

Climatic changes, including sea level rise, are major threats to south Florida, including the Miami blue and its habitat. Known occurrences and suitable habitat are in low-lying areas and will be affected by rising sea level. In general, the Intergovernmental Panel on Climate Change (IPCC) reported that the warming of the world's climate system is unequivocal based on documented increases in global average air and ocean temperatures, unprecedented melting of snow and ice, and rising average sea level (IPCC 2007, p. 2; 2008, p. 15). Sea level rise is the largest climate-driven challenge to low-lying coastal areas and refuges in the subtropical ecoregion of southern Florida (U.S. Climate Change Science Program [CCSP] 2008, pp. 5–31, 5–32). The long-term record at Key West shows that sea level rose on average 0.088 inches (0.224 cm) annually between 1913 and 2006 (National Oceanographic and Atmospheric Administration [NOAA] 2008, p. 1). This equates to approximately 8.76 inches (22.3 cm) in 100 years (NOAA 2008, p. 1).

In a technical paper following its 2007 report, the IPCC (2008, p. 28) emphasized it is very likely that the average rate of sea level rise during the 21st century will exceed that from 1961 to 2003, although it was projected to have substantial geographical variability. Partial loss of the Greenland and Antarctic ice sheets could result in many feet (several meters) of sea level rise, major changes in coastlines, and inundation of low-lying areas (IPCC 2008, pp. 28–29). Low-lying islands and river deltas will incur the largest impacts (IPCC 2008, pp. 28–29). According to CCSP (2008, p. 5–31), much of low-lying, coastal south Florida ''will be underwater or inundated with salt water in the coming century.'' This means that most occupied, suitable, and potential habitat for Miami blue will likely be either submerged or affected by increased flooding.

The 2007 IPCC report found a 90 percent probability of an additional 7 to 23 inches and possibly as high as many feet (several meters) of sea level rise by 2100 in the Keys. This would cause major changes to coastlines and inundation of low-lying areas like the Keys (IPCC 2008, pp. 28–29). The IPCC (2008, pp. 3, 103) concluded that climate change is likely to increase the occurrence of saltwater intrusion as sea level rises. Since the 1930s, increased salinity of coastal waters contributed to the decline of cabbage palm forests in southwest Florida (Williams *et al.* 1999, pp. 2056–2059), expansion of mangroves into adjacent marshes in the Everglades (Ross *et al.* 2000, pp. 9, 12–13), and loss of pine rockland in the Keys (Ross *et al.* 1994, pp. 144, 151–155).

Hydrology has a strong influence on plant distribution in these and other coastal areas (IPCC 2008, p. 57). Such communities typically grade from salt to brackish to freshwater species. In the Keys, elevation differences between such communities are very slight (Ross *et al.* 1994, p. 146), and horizontal distances are also small. Human developments will also likely be significant factors influencing whether natural communities can move and persist (IPCC 2008, p. 57; CCSP 2008, p. 7–6). For the Miami blue, this means that much of the butterfly's habitat in the Keys, as well as habitat in other parts of its historical range, will likely change as vegetation changes. Any deleterious changes to important host plants and nectar sources could further diminish the likelihood of the subspecies' survival and recovery.

The Nature Conservancy (TNC) (2010, p. 1) used Light Detection and Ranging (LIDAR) remote sensing technology to derive digital elevation models and predict future shorelines and distribution of habitat types for Big Pine Key based on sea level rise predictions ranging from the best case to worst case scenarios described by current scientific literature. In the Keys, models predicted that sea level rise will first result in the conversion of habitat and eventually the complete inundation of habitat. In the best case scenario, a rise of 7 inches (18 cm) would result in the inundation of 1,840 acres (745 ha) (34 percent) of Big Pine Key and the loss of 11 percent of the island's upland habitat (TNC 2010, p. 1). In the worst case scenario, a rise of 4.6 feet (140 cm) would result in the inundation of about 5,950 acres (2,409 ha) (96 percent) and the loss of all upland habitat (TNC 2010, p. 1). Although the Miami blue no longer occurs on Big Pine Key, it was historically found on this island. If modeling is accurate, under the worst case scenario, even upland habitat on Big Pine Key will become submerged, thereby making the butterfly's potential recolonization or survival at this and other low-lying locations in the Keys very unlikely.

Similarly, using a spatially explicit model for the Keys, Ross *et al.* (2009, p. 473) found that mangrove habitats will expand steadily at the expense of upland and traditional habitats as sea level rises. Most of the upland and transitional habitat in the central portion of Sugarloaf Key is projected to be lost with a 0.2-meter rise (0.7-foot rise) in sea level; a 0.5-meter rise (1.6-foot rise) in sea level can result in a 95 percent loss of upland habitat by 2100 (Ross *et al.* 2009, p. 473). Furthermore, Ross *et al.* (2009, pp. 471–478) suggested that interactions between sea level rise and pulse disturbances (*e.g.,* storm surges or fire [see Factor E]) can cause vegetation to change sooner than projected based on sea level alone.

Scientific evidence that has emerged since the publication of the IPCC Report (2007) indicates an acceleration in global climate change. Important aspects of climate change seem to have been underestimated previously, and the resulting impacts are being felt sooner. For example, early signs of change suggest that the 1°C of global warming the world has experienced to date may have already triggered the first tipping point of the Earth's climate system—the disappearance of summer Arctic sea ice. This process could lead to rapid and abrupt climate change, rather than the

gradual changes that were forecasted. Other processes to be affected by projected warming include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity) (see Factor E). The MIT scenarios combine various levels of sea level rise, temperature change, and precipitation differences with population, policy assumptions, and conservation funding changes. All of the scenarios, from small climate change shifts to major changes, will have significant effects on the Keys.

We have identified a number of threats to the habitat of the Miami blue which have operated in the past, are impacting the subspecies now, and will continue to impact the subspecies in the foreseeable future. Based on our analysis of the best available information, we find that the present and threatened destruction, modification, or curtailment of the subspecies' habitat is a threat to the subspecies throughout all of its range. We have no reason to believe that this threat will change in the foreseeable future. The decline of butterflies in south Florida is primarily the result of the long-lasting effects of habitat loss, degradation, and modification from human population growth and associated development and agriculture. Environmental effects resulting from climatic change, including sea level rise, are expected to become severe in the future and result in additional losses. Although efforts have been made to restore habitat in some areas, the long-term effects of large-scale and wide-ranging habitat modification, destruction, and curtailment will last into the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Collection

Rare butterflies and moths are highly prized by collectors, and an international trade exists in specimens for both live and decorative markets, as well as the specialist trade that supplies hobbyists, collectors, and researchers (Collins and Morris 1985, pp. 155–179; Morris *et al.* 1991, pp. 332–334; Williams 1996, pp. 30–37). The specialist trade differs from both the live and decorative market in that it concentrates on rare and threatened species (U.S. Department of Justice [USDJ] 1993, pp. 1–3; *United States* v. *Skalski et al.,* Case No. CR9320137, U.S. District Court for the Northern District of California [USDC] 1993, pp. 1–86). In general, the rarer the species, the more valuable it is; prices can exceed $25,000 for exceedingly rare specimens. For example, during a 4-year investigation, special agents of the Service's Office of Law Enforcement executed warrants and seized over 30,000 endangered and protected butterflies and beetles, with a total wholesale commercial market value of about $90,000 in the United States (USDJ 1995, pp. 1–4). In another case, special agents found at least 13 species protected under the Act, and another 130 species illegally taken from lands administered by the Department of the Interior and other State lands (USDC 1993, pp. 1–86; Service 1995, pp. 1–2). Law enforcement agents routinely see butterfly species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) during port inspections in Florida, often without import declarations or the required CITES permits (E. McKissick, Service Law Enforcement, pers. comm. 2011).

Several listings of butterflies as endangered or threatened species under the Act have been based, at least partially, on intense collection pressure. Notably, the Saint Francis' satyr (*Neonympha mitchellii francisci*) was emergency-listed as endangered on April 15, 1994 (59 FR 18324). The Saint Francis' satyr was demonstrated to have been significantly impacted by collectors in just a 3-year period (59 FR 18324). The Callippe and Behren's silverspot butterflies (*Speyeria callippe callippe* and *Speyeria zerene behrensii*) were listed as endangered on December 5, 1997 (62 FR 64306), partially due to overcollection. The Blackburn's sphinx moth (*Manduca blackburni*) was listed as endangered on February 1, 2000 (65 FR 4770), partially due to overcollection by private and commercial collectors. The Schaus swallowtail (*Heraclides* [*Papilio*] *aristodemus ponceanus*), the only federally listed butterfly in Florida, was reclassified from threatened to endangered in 1984 due to its continued decline (49 FR 3450). At the time of its original listing, some believed that collection represented a threat. As the Schaus decreased in distribution and abundance, collection was believed to be a greater threat than at the time of listing (49 FR 3450).

Collection was cited as a threat to the Miami blue in both the original and subsequent petitions for emergency listing. The State's management plan for the Miami blue acknowledges that butterfly collecting may stress small, localized populations and lead to the loss of individuals and genetic variability, but also indicates that there is no evidence or information on current or past collection pressure on the Miami blue (FWC 2010, p. 13). Butterflies in small populations are vulnerable to harm from collection (Gall 1984, p. 133). A population may be reduced to below sustainable numbers (Allee effect) by removal of females, reducing the probability that new colonies will be founded. Collectors can pose threats to butterflies because they may be unable to recognize when they are depleting colonies below the thresholds of survival or recovery (Collins and Morris 1985, pp. 162–165). There is ample evidence of collectors impacting other imperiled and endangered butterflies (Gochfeld and Burger 1997, pp. 208–209), host plants (Cech and Tudor 2005, p. 55), and even contributing to extirpations (Duffey 1968, p. 94). For example, the federally endangered Mitchell's satyr (*Neonympha mitchellii mitchellii*) is believed to have been extirpated from New Jersey due to overcollecting (57 FR 21567; Gochfeld and Burger 1997, p. 209).

Although we do not have evidence of illegal collection of the Miami blue, we do have evidence of illegal collection of other butterflies from Federal lands in south Florida, including the endangered Schaus swallowtail. In a 1993 case, three defendants were indicted for conspiracy to violate the wildlife laws of the United States, including the Endangered Species Act, the Lacey Act, and 18 U.S.C. 371 (USDC 1993, p. 1). Violations involved numerous listed, imperiled, and common species from many locales; defendants later pled guilty to the felonies (Service 1995, p. 1). As part of the evidence cited in the case, defendants exchanged butterflies taken from County and Federal lands in Florida and acknowledged that it was best to trade ''under the table'' to avoid permits and ''extra red tape'' because some were on the endangered species list (USDC 1993, p. 9). Acknowledging the difficulties in obtaining Schaus swallowtail, defendants indicated that they would traffic amongst each other to exchange a Schaus for other extremely rare butterflies (USDC 1993, p. 10). These defendants engaged in interstate commerce, exchanging a male Schaus in 1984 in the course of a commercial activity (USDC 1993, p. 11). One defendant also trafficked with a collector in Florida, dealing the federally listed San Bruno elfin butterfly (*Callophrys mossii bayensis*) (USDC 1993, p. 67).

Illegal collection of butterflies on State, Federal, and other lands in Florida appears ongoing, prevalent, and damaging. As part of the aforementioned case, one defendant, who admitted getting caught collecting within ENP and Loxahatchee National Wildlife Refuge, stated that he ''got

away with it each time, simply claiming ignorance of the laws * * *.'' (USDC 1993, p. 13). Another defendant detailed his poaching in Florida and acquisition of federally endangered butterflies, acknowledging that he had ''fared very well, going specifically after rare stuff'' (USDC 1993, pp. 28–29). The same defendant offered to traffic atala hairstreaks (*Eumaeus atala*), noting that he did not do very well and had only taken about 600 bugs in 9 days and that this number seemed poor for Florida (USDC, p. 46). He further stated that collecting had become difficult in Florida due to restrictions and extreme loss of habitat, admitting that he needed to poach rare butterflies from protected parks (USDC 1993, p. 45). Methods to poach wildlife and means to evade wildlife regulations, laws, and law enforcement were given (USDC 1993, p. 33). In a separate incident in 2008, an individual was observed attempting to take butterflies from Service lands in the Keys (D. Pharo, Service Law Enforcement, pers. comm. 2008). When confronted by a FWC officer, he lied about his activities; a live swallowtail butterfly (unidentified) was found in an envelope on his person, a collapsible butterfly net was found in a nearby area, and a cooler containing other live butterfly species was in his car (D. Pharo, pers. comm. 2008).

Additionally, we are aware of and have documented evidence of interest in the collection of other imperiled butterflies in south Florida. In the aforementioned indictment, one defendant noted that there was a ''huge demand for Florida stuff,'' that he knew ''exactly where all the rare stuff is found,'' that he ''can readily get material,'' and that in most cases he would ''have to poach the material from protected parks'' (USDC 1993, p. 44). Salvato (pers. comm. 2011e) has also been contacted by several individuals requesting specimens of two Federal candidates, the Florida leafwing (*Anaea troglodyta floridalis*) and Bartram's hairstreak (*Strymon acis bartrami*), or seeking information regarding locations where they may be collected in the field. In addition, interest in the collection of the Florida leafwing was posted by two parties on at least one Web site in 2010 along with advice on where and how to bait trap, despite the fact that this butterfly mainly occurs on Federal lands within ENP. Thus, there is established and ongoing collection pressure for rare butterflies, including two other highly imperiled candidate species in south Florida.

We are also aware of multiple Web sites that offer specimens of south Florida's candidate butterflies for sale (M. Minno, pers. comm. 2009; C. Nagano, Service, pers. comm. 2011). At one Web site, male and female Florida leafwing specimens can be purchased for €110.00 and €60.00 (euros), respectively (approximately $153.18 and $83.55). It is unclear from where the specimens originated or when these were collected, but this butterfly is now mainly restricted to ENP. The same Web site offers specimens of Bartram's hairstreak for €10.00 ($13.93). Although the specifics on its collection are not clear, this butterfly now mainly occurs on protected Federal, State, and County lands. The same Web site offers specimens of two other butterflies similar in appearance to the Miami blue; the ceraunus blue currently sells for €4.00 ($5.57), and the cassius blue is available for €2.50–10.00 ($3.48-$13.93). Additionally, other subspecies of *Cyclargus thomasi* that occur in foreign countries are also for sale. It is clear that a market currently exists for both imperiled species and those similar in appearance to the Miami blue.

The potential for unauthorized or illegal collection of the Miami blue (eggs, larvae, pupae, or adults) exists, despite its State-threatened status and the protections provided on Federal (and State) land. Illegal collection could occur without detection at remote islands of KWNWR since these areas are difficult to patrol. The localized distribution and small population size render this butterfly highly vulnerable to impacts from collection. At this time, removal of any individuals may have devastating consequences to the survival of the subspecies. Although the Miami blue is no longer believed to be present at BHSP, its return is possible. At BHSP, the butterfly, like other wildlife and plant species within the Florida park system, is protected from unauthorized collection (Chapter 62 D–2.013(5)) (see Factor D). However, because BHSP is so heavily used, continual monitoring for illegal collections is a challenge. Daniels (pers. comm. 2002a) believed that additional patrols would be helpful because unauthorized collection of specimens is possible, even though collection is prohibited (J. Daniels, pers. comm. 2002a). In addition, any colonies that might be found or become established outside of BHSP or other protected sites would also not be patrolled and would be at risk of collection.

Although the Miami blue's status as a State-threatened species provides some protection, this protection does not include provisions for other species of blues that are similar in appearance. Therefore, it is quite possible that collectors authorized to collect similar species may inadvertently (or purposefully) collect the Miami blue butterfly thinking it was, or planning to claim they thought it was, the cassius blue, nickerbean blue, or ceraunus blue, which also occur in the same general geographical area and habitat type. Federal listing of other similar butterflies can partially reduce this threat (see Similarity of Appearance below) and provide added protective measures for the Miami blue above those afforded by the State.

In summary, due to the few metapopulations, small population size, restricted range, and remoteness of occupied habitat, we believe that collection is a significant threat to the subspecies and could potentially occur at any time. Even limited collection from the small population in KWNWR (or other populations, if discovered) could have deleterious effects on reproductive and genetic viability and thus could contribute to its extinction.

Scientific Research and Conservation Efforts

Some techniques (*e.g.,* capture, handling) used to understand or monitor the Miami blue have the potential to cause harm to individuals or habitat. Visual surveys, transect counts, and netting for identification purposes have been performed during scientific research and conservation efforts with the potential to disturb or injure individuals or damage habitat. Mark-recapture, a common method used to determine population size, has been used by some researchers to monitor Miami blue populations. This method has received some criticism. While mark-recapture may be preferable to other sampling estimates (*e.g.,* count-based transects) in obtaining demographic data when used in a proper design on appropriate species, such techniques may also result in deleterious impacts to captured butterflies (Mallet *et al.* 1987, pp. 377–386; Murphy 1988, pp. 236–239; Haddad *et al.* 2008, pp. 929–940). Although effects may vary depending upon taxon, technique, or other factors, some studies suggest that marking may damage or kill butterflies or alter their behaviors (Mallet *et al.* 1987, pp. 377–386; Murphy 1988, pp. 236–239). Murphy (1988, p. 236) and Mattoni *et al.* (2001, p. 198) indicated that studies on various lycaenids have demonstrated mortality and altered behavior as a result of marking. Conversely, other studies have found that marking did not harm individual butterflies or populations (Gall 1984, pp. 139–154; Orive and Baughman 1989, p. 246; Haddad *et al.* 2008, p. 938). No studies

have been conducted to determine the potential effects of marking on the Miami blue. Although data are lacking, researchers permitted to use such techniques have been confident in their abilities to employ the techniques safely with minimal effect on individuals handled. Researchers currently studying the population within KWNWR have opted to not use mark-release-recapture techniques due to the potential for damage to this small, fragile butterfly (N. Haddad, pers. comm. 2011).

Captive propagation and reintroduction activities may present risks if wild populations are impacted or if the species is introduced to new or inappropriate areas outside of its historical range (65 FR 56916–56922). Although butterflies were successfully reared in captivity at the UF with the support of State and Federal agencies, efforts to reintroduce the Miami blue to portions of its historical range did not result in the establishment of any new populations (Emmel and Daniels 2009, pp. 4–5; FWC 2010, p. 8). While some monitoring occurred following releases, it is not clear why captive-reared individuals did not persist in the wild. Perhaps experiments using surrogate species (*e.g.,* other lycaenids) and more structured and intense monitoring following releases can help elucidate possible causes for failure and improve chances for reestablishment in the future.

Declines in the captive colony in 2005 and 2006 were attributed to a baculovirus; consequently, this captive colony was terminated after 30 generations and another was started with new stock from BHSP (Saarinen 2009, p. 92). Baculovirus infections are capable of devastating both laboratory and wild butterfly populations (Saarinen 2009, pp. 99, 119). Irrevocable consequences may occur if a pathogen is transferred from laboratory-reared to wild populations. Genetic diversity within the captive colony was lost over time (between generations) (Saarinen 2009, p. 100). At one point, the captive colony was not infused with new genetic material for approximately 1 year due to low numbers within the wild population; decreases in genetic diversity, allelic richness, and number of individuals produced occurred during this time (Saarinen 2009, p. 100). While captive propagation and reintroduction efforts offer enormous conservation potential, there can be associated risks and ramifications to both wild and captive-reared individuals and populations.

The use of captive-reared Miami blues in pesticide-use and life-history studies can be questioned and has been criticized by some (FWC 2010, p. 10). All experiments were conducted with captive-reared individuals; no wild individuals were used. Individuals used in experiments were not intended for release back into the wild or were reared specifically for this purpose. Researchers involved with the captive colony and others conducting scientific studies or other conservation efforts were authorized by appropriate agencies to conduct such work.

In summary, we believe that captive propagation and reintroduction may be important components of the subspecies' survival and recovery, but such actions need to be carefully planned, implemented, and monitored. Any future efforts should only be initiated after it has been determined that: Such actions will not harm the wild population, rigorous standards are met, and commitments are in place to increase the likelihood of success and maximize knowledge gained.

On the basis of this analysis, we find that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the Miami blue. Collection is a significant threat to the subspecies. Based on our analysis of the best available information, we have no reason to believe that its vulnerability to collection and risks associated with scientific or conservation efforts will change in the foreseeable future.

C. Disease or predation

The effects of disease or predation are not well known. Because the Miami blue is known from only a few locations and population size appears low, disease and predation could pose a threat to its survival.

Disease

A baculovirus was confirmed within the captive colony, and infection caused the death of Miami blue larvae in captivity (see Factor B above) (Saarinen 2009, p. 120). Pathogens have affected other insect captive-breeding programs, however, this was the first time a baculovirus was found to affect a captive colony of an endangered Lepidopteran (Saarinen 2009, p. 120). A baculovirus or other disease or pathogens have the potential to destroy wild populations (Saarinen 2009, p. 99). Plant pathogens could also negatively impact host plant survival, host growth, or the production of terminal host growth available to developing larvae (Emmel and Daniels 2004, p. 14). At this time, we are not aware of any disease or pathogens affecting Miami blue butterflies or host plants in the wild.

Predation

Predation of adults or immature stages was not observed during monitoring at BHSP, despite the presence of potential predators (Emmel and Daniels 2004, p. 12; Trager 2009, p. 152). Several species of social wasps, specifically paper wasps (Polistes) and yellow jackets (Vespula), are known to depredate Lepidoptera on nickerbean and surrounding vegetation at BHSP and other sites with suitable habitat, but predation on Miami blue larvae was not observed (Trager 2009, p. 152). Carroll and Loye (2006, p. 18) encountered a parasitic wasp, *Lisseurytomella flava,* during their studies of the balloonvine insects on northern Key Largo during the late 1980s. No wasp parasitism towards Miami blue larvae was noted (Carroll and Loye 2006, p. 24). However, this wasp, along with the Miami blue, was absent from continued balloonvine sampling in 2003, suggesting the wasp may have used the butterfly as host.

Cannon *et al.* (2007, p. 16) observed wasps (unidentified) eating Miami blue larvae at KWNWR; wasps and dragonflies were also observed to chase adults in flight. Adult Miami blues were found entrapped in the webs of silver orb spiders (*Argiope argentata*) (Cannon *et al.* 2007, p. 16). Trager (2009, pp. 149, 153–154) indicated that the Miami blue is likely depredated under natural conditions, but only predation by an adult brown anole lizard (*Anolis sagrei*) was observed during field studies. Iguanas likely consume eggs and pupae when opportunistically feeding (P. Hughes, pers. comm. 2009; Daniels 2009, p. 5; FWC 2010, p. 13), especially since the butterfly uses the same terminal growth of host plants (see Factor E). Predators and parasitoids have been suggested as potential contributors to the butterfly's decline (M. Minno, pers. comm. 2010), but this has not been observed or confirmed in the field (Trager 2009, p. 149; Minno and Minno 2009, p. 78; FWC 2010, pp. 13, 24).

Overall, the extent to which native or exotic ants and other predators and parasitoids may pose a threat to the Miami blue is not clear, but deserves further attention. For example, invasive fire ants (*Solenopsis invicta*) were first confirmed in counties within the historical range of the Miami blue as early as 1958 (Hillsborough); other counties were confirmed in the late 1960s (Brevard and Volusia) and 1970s (Broward, Collier, Miami-Dade, Lee, Monroe) (Callcott and Collins 1996, p. 249); infestation has since expanded. In addition to the possible direct effects of predation, fire ants can also disrupt

arthropod communities and displace native ants. For example, in one study, Porter and Savignano (1990, pp. 2095–2106) found that *S. invicta* reduced species richness by 70 percent and abundance of native ants by 90 percent.

Both the red imported fire ant and the little fire ant (*Wasmannia auropunctata*), another invasive exotic ant, currently occur at BHSP (Saarinen and Daniels 2006, p. 71). In one study in Key Largo, fire ants were found within half of the study transects and in close proximity to the edge of hardwood hammock habitat (Forys *et al.* 2001, p. 257). Forys *et al.* (2001, p. 257) found all immature swallowtail life stages to be vulnerable to predation by imported fire ants and recognized the potential impact of this predatory insect on the federally endangered Schaus swallowtail and other butterflies in south Florida. Thus, immature life stages of the Miami blue may be vulnerable to predation by fire ants within its current locations or if the butterfly still persists, elsewhere in its historical range.

In a greenhouse situation, Trager (2009, p. 151) observed fire ants removing Miami blue eggs in an indoor flight cage, but noted that the ants did not attack larvae on the same plant. In his studies, a captive colony of fire ants was found to consume captive-reared Miami blue pupae in food trays; however, the ants did not remove newly laid eggs from the host plant and even exhibited weak tending behavior toward larvae (Trager 2009, pp. 151–152). At this time, it is unclear to what extent native and exotic predatory insects may be impacting wild Miami blue populations.

Some ant species may also protect Miami blue larvae against parasitoids and predators; however, this has not yet been observed in the wild (Trager and Daniels 2009, 479; Trager 2009, p. 101). In laboratory studies, *Camponotus floridanus* ants have been shown to display strong defensive behaviors (*e.g.,* rapidly circling larvae, recruiting nearby workers, and lunging at forceps) when disturbed (Trager and Daniels 2009, p. 480; Trager 2009, p. 102). The large size of this ant species and nearly constant tending may serve as a visual deterrent to potential attackers; however, researchers acknowledged that they have no definitive evidence that *C. floridanus* are more effective defenders of Miami blue larvae than small-bodied ant species (Trager and Daniels 2009, p. 480; Trager 2009, p. 97).

Researchers have suggested that some ant species may depredate Miami blue larvae or may opportunistically tend larvae without providing protection against predators or other benefits (Saarinen and Daniels 2006, p. 73; Saarinen 2009, pp. 134, 138). However, Trager and Daniels (2009, pp. 478–481) recorded a universal tending response among ants consistent with a mutualistic interaction through both field observations and laboratory trials. They did not observe any depredation of larvae by ants in the field and, based upon observations, doubted that many ant species regularly depredate larvae (Trager and Daniels 2009, pp. 479–481; Trager 2009, p. 149).

Studies suggest that various stressors (*e.g.,* baculovirus, fire ants) have the potential to negatively impact the Miami blue, but we do not have evidence of their impacts to wild populations. The Miami blue may have some mechanisms to potentially deter predators and parasitoids, but these are not well understood. Disease and predation have the potential to impact the Miami blue's continued survival, given its few remaining populations, low abundance, and limited range. Based on our analysis of the best available information, we do not believe that disease or predation is a significant threat to its overall status at this time. However, given its small population size, disease and predation have the potential to impact the subspecies now or in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

Despite the fact that they contain several protections for the Miami blue, Federal, State, and local laws have not been sufficient to prevent past and ongoing impacts to the Miami blue and its habitat within its current and historical range.

In response to a petition from the NABA in 2002, the FWC emergency-listed the Miami blue butterfly in 2002, temporarily protecting the butterfly. On November 19, 2003, the FWC declared the Miami blue butterfly endangered (68A–27.003), making its protection permanent. On November 8, 2010, the FWC adopted a revised listing classification system, moving from a multi-tiered to single-category system. As a consequence of this change, the Miami blue butterfly (along with other species) became a State-threatened species; its original protective measures remained in place (68A–27.003, amended). This designation prohibits any person from taking, harming, harassing, possessing, selling, or transporting any Miami blue or parts thereof or eggs, larvae or pupae, except as authorized by permit from the executive director, with permits issued based upon whether issuance would further management plan goals and objectives. Although these provisions prohibit take of individuals, there is no substantive protection of Miami blue habitat or protection of potentially suitable habitat. Therefore, while the Miami blue butterfly is afforded some protection by its presence on Federal (and State) lands, losses of suitable and potential habitat outside of these areas are expected to continue (see Factor A).

The Miami blue's presence on Federal (and State) lands offers some insulation against collection, but protection is somewhat limited (see Factor B). In addition, the State's protection of the Miami blue does not extend to butterflies that are similar in appearance (see Similarity of Appearance below). Since there are only slight morphological differences between the Miami blue and other butterfly species in the same areas, the Miami blue remains at-risk to illegal collection, despite the regulatory mechanisms already in place (see Factor B).

As part of its listing process, the FWC has completed a biological status review and management plan for the subspecies (FWC 2003, pp. 1–26). This management plan was recently revised (FWC 2010, pp. ii–39). Although the management plan is a fundamental step in outlining conservation needs, it may be insufficient for achieving conservation goals and long-term persistence. Recommended conservation strategies and actions within the plan are voluntary and dependent upon adequate funding, staffing, and the cooperation and participation of multiple agencies and private entities, which may or may not be available or able to assist. Conservation strategies include suggested actions to maintain, protect, and monitor known metapopulations; establish new metapopulations; and conduct additional research to support conservation (FWC 2010, pp. 17–26).

As a Federal candidate subspecies, the Miami blue is afforded some protection through sections 7 and 10 of the Act and associated policies and guidelines, but protection is limited. Federal action agencies are to consider the potential effects to the butterfly and its habitat during the consultation process. Applicants and action agencies are encouraged to consider candidate species when seeking incidental take for other listed species and when developing habitat conservation plans. On Federal lands, such as KWNWR, candidate species are treated as ''proposed threatened.''

Although the Miami blue occurs on Federal (and possibly State) land that offers protection, these areas are vast

and often heavily used. Signage prohibiting collection is sometimes lacking; patrolling and monitoring of activities can be limited and dependent upon the availability of staffing and resources. Within KWNWR, the Marquesas Keys are open to the public; portions of the beach on Boca Grande are closed to the public (T. Wilmers, pers. comm. 2011b). In general, occupied islands are remote and difficult to patrol, and illegal use still occurs (see Factor E). Therefore, the potential for illegal collection and damage to sensitive habitats still exists (see Factors B and E).

Prior to its apparent extirpation, the metapopulation at BHSP was afforded some protection by its presence on State lands. All property and resources owned by FDEP are generally protected from harm in Chapter 62D–2.013(2) and animals are specifically protected from unauthorized collection in Chapter 62D–2.013(5) of the Florida Statutes. Exceptions are made for collecting permits, which are issued, ''for scientific or educational purposes.'' Still, protection of resources at BHSP is a challenge due to the park's popularity and high use (See Factor E). However, in 2010, the FDEP hired a temporary, full-time biologist to work on Miami blue conservation issues at BHSP, including patrol of sensitive habitats.

Permits are required from the FWC for scientific research on and collection of the Miami blue. For work on Federal lands (*i.e.,* KWNWR, ENP, and BNP), permits are required from the Service or the NPS. For work on State lands, permits are required from FDEP. Permits are also required for work on County-owned lands.

Despite these existing regulatory mechanisms, the Miami blue continues to decline due to the effects of habitat loss (see Factor A) and a wide array of other factors (see Factors B and E). We find that regulatory measures have been insufficient to significantly reduce or remove the threats to the Miami blue and, therefore, that the inadequacy of existing regulatory mechanisms is a threat to the subspecies throughout all of its range. Based on our analysis of the best available information, we have no reason to believe that the aforementioned regulations, which currently do not offer adequate protection to the Miami blue, will be improved in the foreseeable future.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Impacts From Iguanas

The exotic green iguana (*Iguana iguana*) is a severe threat to the Miami blue (75 FR 69258; Daniels 2009, p. 5; FWC 2010, pp. 6, 13; Olle 2010, pp. 4, 14). Iguanas are prevalent within the Keys, and sightings within occupied and potential habitat are common (P. Cannon, pers. comm. 2009, 2010d, 2010e). Effects of herbivory to the host plant (nickerbean) at BHSP were evident by late 2008 and early 2009 (Emmel and Daniels 2009, p. 4; Daniels 2009, p. 5; P. Hughes, pers. comm. 2009; P. Cannon, pers. comm. 2009; A. Edwards, pers. comm. 2009). In January 2009, Cannon (pers. comm. 2009) reported that iguanas had stripped all new nickerbean growth, causing substantial losses since November 2008. In April 2009, nickerbean showed signs of limited growth due to chronic herbivory (P. Hughes, pers. comm. 2009).

In addition to damage, iguanas likely consume eggs and pupae when opportunistically feeding (P. Hughes, pers. comm. 2009; Daniels 2009, p. 5; FWC 2010, p. 13), especially since the butterfly uses the same terminal growth of host plants. For many years, host plant abundance within BHSP appeared capable of sustaining both iguanas and Miami blues. Depressed numbers of Miami blues in 2008, however, were likely the result of both a severe drought and impacts to the nickerbean from iguanas feeding on the terminal nickerbean growth (FWC 2010, p. 6). During the winter of 2010, prolonged and unseasonably cold temperatures in the lower Keys resulted in a considerable decline in available nickerbean at BHSP (Olle 2010, p. 14). The suppressed population of the Miami blue at this site during this time may not have been able to survive this temporary, but severe, reduction in nickerbean, likely caused by the combined influences of iguanas and environmental factors (*e.g.,* drought and cold).

Iguana tracks were found on islands occupied by the Miami blue in KWNWR (Cannon *et al.* 2007, p. 16; T. Wilmers, pers. comm. 2011c). Three large, gravid female iguanas were trapped and removed from the Marquesas in February 2011 (T. Wilmers, pers. comm. 2011d). To date, the presence of iguanas has been documented on four islands (two islands within the Marquesas, and Boca Grande and Woman Key) (T. Wilmers, pers. comm. 2011a). Cannon *et al.* (2007, p. 16) stated that the exotic herbivore has the potential to impact host and nectar plants. Iguanas have also been observed on three islands in GWHNWR (Snipe Point, Sawyer Key, and Secret Key) since 2006 (T. Wilmers, pers. comm. 2011b).

Resource agencies are working to combat the threat of green iguanas in areas occupied (and recently occupied) by the Miami blue. At BHSP, cooperative efforts have resulted in the trapping and removal of 130 iguanas between November 2009 and June 2011 (Emmel and Daniels 2009, p. 4; FWC 2010, p. 17; E. Kiefer, pers. comm. 2011a, 2011b). While removal efforts have significantly decreased the number of iguanas within BHSP, these management actions will need to be an ongoing effort due to the prevalence of iguanas in the surrounding areas (R. Zambrano, pers. comm. 2009). Efforts are also underway to address this threat at KWNWR (T. Wilmers, pers. comm. 2011a, 2011c, 2011d, 2011e). Despite cooperative efforts, the threat from iguanas is expected to continue due to their widespread distribution and the difficulties in control.

Competition

Host resource competition from other butterfly species could deleteriously impact metapopulation productivity of the Miami blue. The introduction of or future island colonization by potential Lepidopteran competitors may impact the Miami blue metapopulation. The nickerbean blue, cassius blue, and Martial's scrub hairstreak are known to use various species of nickerbean host plants throughout their range (Glassberg *et al.* 2000, pp. 74–80; Calhoun *et al.* 2002, p. 15). The nickerbean blue and Martial's scrub hairstreak have been documented using gray nickerbean as a host plant at BHSP (Daniels *et al.* 2005, p. 174; P. Cannon, pers. comm. 2010g). Such host use may represent direct competition for host resources (Emmel and Daniels 2004, p. 14). However, Calhoun *et al.* (2002, p. 18) believed it was unlikely that competition played a significant role in the decline of the Miami blue based on the abundance of host plant sources available to lycaenids throughout the Lower Keys. We do not have evidence to suggest that host resource competition is a threat to the Miami blue at this time or is likely to become so in the future.

Inadvertent Impacts From Humans

Inadvertent damage from humans can affect the Miami blue and its habitat in its current and former range. For example, the seed pods of balloonvine ''pop'' when squeezed and can be targeted by humans. Damage to balloonvine has been documented along roads in the Keys (J. Loye, University of California-Davis, pers. comm. 2003a, 2003b). During a study in the mid 1980s examining balloonvine and its associated insect community, Loye (pers. comm. 2003a) found a difference in insect diversity between sites along

roads and those without road access. Acknowledging other possible contributing factors (*e.g.,* mosquito control, car emissions), Loye (pers. comm. 2003a) indicated that collectors and maintenance crews damaged balloons near roads, stating that ''humans damaged every balloon that could be easily found at our study sites'' (J. Loye, pers. comm 2003b). It is not clear what, if any, impact this had on the butterfly at or since that time. However, damage to host plants (whole or parts) could contribute to mortality of eggs or larvae.

BHSP is heavily used by the public for recreational purposes, and although the butterfly has not been seen at this location since early 2010, suitable habitat is located along trails and other high-use areas (*e.g.,* campgrounds). Former colonies may have experienced disturbance from Park visitors. Trampling of host plants and well-worn footpaths were evident, at least periodically from 2002 to 2010, and during times when other stressors (*e.g.,* cold, drought, iguanas) occurred (P. Halupa, pers. obs. 2002; D. Olle, pers. comm. 2010; M. Salvato, pers. comm. 2010a; R. Zambrano, pers. comm. 2010). To protect larval host plants and adult nectar sources, the Florida Park Service (FPS) erected fencing and signage around the majority of the south colony site at BHSP. Although this is expected to minimize damage to the largest habitat patch, other small habitat patches (as small as 15.0 by 15.0 feet [4.6 by 4.6 meters]) elsewhere on the island are still vulnerable to intentional or accidental damage. Fencing small colony sites or patches of available habitat is impractical and would make exact locations of colonies more evident, possibly increasing the risk of illegal collection or harm should the Miami blue return to the island.

KWNWR lacks human developments, but local disturbances result from illicit camping, fire pits, smugglers, vandals, and immigrant landings. These disturbances are generally infrequent for most islands within KWNWR with the exception of Boca Grande, which contains the largest amounts of beach. Recreational visitation is high on Boca Grande, particularly during weekends (Cannon *et al.* 2010, p. 852). Trampling of dune vegetation has been a long-term problem on Boca Grande, and fire pits have been found many times over the past two decades on both Boca Grande and the Marquesas Keys (Cannon *et al.* 2010, p. 852). In addition, the large amount of dead vegetation intermingled with host plants on Boca Grande and the Marquesas Keys makes the threat of fire (natural or human-induced), a significant threat to the Miami blue (Cannon *et al.* 2007, p. 13; 2010, p. 852). Immature stages (eggs, larvae), which are sedentary, would be particularly vulnerable. Glassberg and Olle (2010, p. 1) asserted that ''the proximity of the islands within KWNWR, to both Key West and the Dry Tortugas, invite human mischief, and largely go unpoliced.'' These areas within KWNWR are remote and accessible mainly by boat, making them difficult to patrol and monitor.

In summary, inadvertent impacts from humans may have affected the Miami blue and its habitat. Due to the location of occupied and suitable habitat, the popularity of these areas with humans, and the projected human growth especially in coastal areas, such impacts from recreation and other uses are expected to continue.

Other Natural and Unnatural Changes to Habitat

Natural changes to vegetation from environmental factors, succession, or other causes may now be a threat to the Miami blue because of its severely reduced range, few populations, and limited dispersal capabilities. Suitable and occupied habitat in KWNWR and other coastal areas is dynamic and fluctuating, influenced by a variety of environmental factors (*e.g.,* storm surge, wind, precipitation). In 2010, substantial changes in habitat conditions on Boca Grande occurred with the proliferation of *Galactia striata,* a native climbing vine (T. Wilmers, pers. comm. 2010a; P. Cannon, pers. comm. 2010b, 2010h, 2010i, 2010j). The vine has enveloped a substantial amount of blackbead, occurring on about 40 percent of the blackbead growing on the seaward side at the dune interface (T. Wilmers, pers. comm. 2010a). Wilmers (pers. comm. 2010a) believes that the extensive growth was likely fueled by the markedly higher precipitation during September and October 2010 (3.47 and 2.22 inches [8.81 and 5.64 cm], respectively, above normal in Key West). Under favorable conditions, the vine first grows in the dune, then sprawls landward laterally, eventually ascending and blanketing blackbead (T. Wilmers, pers. comm. 2010a). While climbing vines can proliferate before eventually dying back, Wilmers (pers. comm. 2010a) states that the intense proliferation in 2010 is unprecedented in his 25 years of work in the area. It is unclear what steps are needed at this time. Left unchecked, this proliferation has the potential to impact host plants and affect the butterfly's ability to persist on some islands.

Invasive and Exotic Vegetation

Displacement of native plants including host plants by invasive exotic species, a common problem throughout south Florida, also possibly contributed to habitat loss of the Miami blue. In coastal areas where undeveloped land remains, the Miami blue's larval food plants are likely to be displaced by invasive exotic plants, such as Brazilian pepper, Australian pine (*Casuarina equesitifolia*), Asian nakedwood (*Colubrina asiatica*), cat-claw vine (*Macfadyena ungius-cati*), wedelia (*Spahneticola trilobata*), largeleaf lantana (*Lantana camara*), Portia tree (*Thespesia populnea*), wild indigo (*Indigofera spicata*), beach naupaka (*Scaevola taccada*), and several species of invasive grasses. Although we do not have direct evidence of exotic species displacing host plants or nectar sources, we recognize this as a potential threat, due to the magnitude of this problem in south Florida.

Pesticides

Efforts to control salt marsh mosquitoes, *Aedes taeniorhynchus,* among others, have increased as human activity and population have increased in south Florida. To control mosquito populations, second-generation organophosphate (naled) and pyrethroid (permethrin) adulticides are applied by mosquito control districts throughout south Florida. The use of pesticides (applied using both aerial and ground-based methods) to control mosquitoes presents a potential risk to nontarget species, including the Miami blue butterfly.

The potential for mosquito control chemicals to drift into nontarget areas and persist for varying periods of time has been well documented. Hennessey and Habeck (1989, pp. 1–22; 1991, pp. 1–68) and Hennessey *et al.* (1992, pp. 715–721) illustrated the presence of mosquito spray residues long after application in habitat of the Schaus swallowtail and other imperiled species in both the upper (Crocodile Lake NWR, North Key Largo) and lower Keys (National Key Deer Refuge [NKDR], Big Pine Key). Residues of aerially applied naled were found 6 hours after application in a pineland area that was 820 yards (750 meters) from the target area; residues of fenthion (an adulticide no longer used in the Keys) applied via truck were found up to 55 yards (50 meters) downwind in a hammock area 15 minutes after application in adjacent target areas (Hennessey *et al.* 1992, pp. 715–721).

More recently, Pierce (2009, pp. 1–17) monitored naled and permethrin

deposition following application in and around NKDR from 2007 to 2009. Permethrin, applied by truck, was found to drift considerable distances from target areas with residues that persisted for weeks. Naled, applied by plane, was also found to drift into nontarget areas but was much less persistent exhibiting a half-life of approximately 6 hours. In 2009, Tim Bargar (U.S. Geological Survey, pers. comm. 2011) conducted two field trials on NKDR that detected significant naled residues at locations within nontarget areas on the refuge that were up to 440 yards (402 m) from the edge of zones targeted for aerial applications.

In addition to mosquito control chemicals entering nontarget areas, the toxic effects of mosquito control chemicals to nontarget organisms have also been documented. Lethal effects on nontarget Lepidoptera have been attributed to fenthion and naled in both south Florida and the Keys (Emmel 1991, pp. 12–13; Eliazar and Emmel 1991, pp. 18–19; Eliazar 1992, pp. 29–30). In the lower Keys, Salvato (2001, pp. 8–14) and Hennessey and Habeck (1991, p. 14) suggested that declines in populations of the Florida leafwing (now a Federal candidate) were also partly attributable to mosquito control chemical applications. Salvato (2001, p. 14; 2002, pp. 56–57) found populations of the Florida leafwing (on Big Pine Key within NKDR) to increase during drier years when adulticide applications over the pinelands decreased, although Bartram's hairstreak did not follow this pattern. It is important to note that vulnerability to chemical exposure may vary widely between species, and current application regimes do not appear to affect some species as strongly as others (Calhoun *et al.* 2002, p. 18; Breidenbaugh and De Szalay 2010, pp. 594–595; Rand and Hoang 2010, pp. 14–17, 20; Hoang *et al.* 2011, pp. 997–1005).

Dose-dependent decreases in brain cholinesterase activity in great southern white butterflies (*Ascia monuste*) exposed to naled have been measured in the laboratory (T. Bargar, pers. comm. 2011). An inhibition of cholinesterase, which is the primary mode of action of naled, prevents an important neurotransmitter, acetylcholine, from being metabolized, causing uncontrolled nerve impulses that may result in erratic behavior and, if severe enough, mortality. From these data, it was determined that significant mortality was associated with cholinesterase activity depression of at least 27 percent (T. Bargar, pers. comm. 2011). In a subsequent field study on NKDR, adult great southern white and Gulf fritillary (*Agraulis vanillae*) butterflies were placed in field enclosures at both target and nontarget areas during aerial naled application. The critical level of cholinesterase inhibition (27 percent) was exceeded in the majority of butterflies from the target areas, as well as in a large proportion of butterflies from the nontarget areas (T. Bargar, pers. comm. 2011). During the same field experiment, great southern white and Gulf fritillary larvae were also exposed in the field during aerial naled application and exhibited mortality at both target and nontarget sites (T. Bargar, pers. comm. 2011).

In a laboratory study, Rand and Hoang (2010, pp. 1–33) and Hoang *et al.* (2011, pp. 997–1005) examined the effects of exposure to naled, permethrin, and dichlorvos (a breakdown product of naled) on both adults and larvae of five Florida native butterfly species (common buckeye (*Junonia coenia*), painted lady (*Vanessa cardui*), zebra longwing (*Heliconius charitonius*), atala hairstreak (*Eumaeus atala*), and white peacock (*Anartia jatrophae*)). The results of this study indicated that, in general, larvae were slightly more sensitive to each chemical than adults, but the differences were not significant. Permethrin was generally the most toxic chemical to both larvae and adults, although the sensitivity between species varied.

The laboratory toxicity data generated by this study were used to calculate hazard quotients (concentrations in the environment/concentrations causing an adverse effect) to assess the risk that concentrations of naled and permethrin found in the field pose to butterflies. A hazard quotient that exceeds one indicates that the environmental concentration is greater than the concentration known to cause an adverse effect (mortality in this case), thus indicating significant risk to the organism. Environmental exposures for naled and permethrin were taken from Zhong *et al.* (2010, pp. 1961–1972) and Pierce (2009, pp. 1–17), respectively, and represent the highest concentrations of each chemical that were quantified during field studies in the Keys. When using the lowest median lethal concentrations from the laboratory study, the hazard quotients for permethrin were greater than one for each adult butterfly, indicating a significant risk of toxicity to each species. In the case of naled, significant risk to the zebra longwing was predicted based on its hazard quotient exceeding one.

From 2006 to 2008, Zhong *et al.* (2010, pp. 1961–1972) investigated the impact of single aerial applications of naled on Miami blue larvae in the field. The study was conducted in North Key Largo in cooperation with the Florida Keys Mosquito Control District (FKMCD) and used experimentally placed Miami blue larvae that were reared in captivity. The study involved 15 test stations: 9 stations in the target zone, 3 stations considered to be susceptible to drift (2 stations directly adjacent to the spray zone and 1 station 12 miles (19.3 km) southwest of the spray zone), and 3 field reference stations (25 miles (40.2 km) southwest of the spray zone). Survival of butterfly larvae in the target zone was 73.9 percent, which was significantly lower than both the drift zone (90.6 percent) and the reference zone (100 percent), indicating that direct exposure to naled poses significant risk to Miami blue larvae. In addition to observing elevated concentrations of naled at test stations in the target zone, 9 of 18 samples in the drift zone also exhibited detectable concentrations, once again exhibiting the potential for mosquito control chemicals to drift into nontarget areas.

Based on these studies, it can be concluded that mosquito control activities that involve the use of both aerial and ground-based spraying methods have the potential to deliver pesticides in quantities sufficient to cause adverse effects to nontarget species in both target and nontarget areas. It should be noted that many of the studies referenced above dealt with single application scenarios and examined effects on only one to two butterfly life stages. Under a realistic scenario, the potential exists for exposure to all life stages to occur over multiple applications in a season. In the case of a persistent compound like permethrin where residues remain on vegetation for weeks, the potential exists for nontarget species to be exposed to multiple pesticides within a season (*e.g.,* permethrin on vegetation coupled with aerial exposure to naled).

Aspects of the Miami blue's natural history may increase its potential to be exposed to and affected by mosquito control pesticides and other chemicals. For example, host plants and nectar sources are commonly found at disturbed sites and often occur along roads in developed areas, where chemicals are applied. Ants associated with the Miami blue (see Interspecific relationships) may be affected in unknown ways. Host plant and nectar source availability may also be indirectly affected through impacts on pollinators. Carroll and Loye (2006, pp. 19, 24) and others (Emmel 1991, p. 13; Glassberg and Salvato 2000, p. 7; Calhoun *et al.* 2002, p. 18) suggested

that the Miami blue butterfly may be more susceptible to pesticides than perhaps other lycaenids (*e.g.,* the silver-banded hairstreak) because Miami blue larvae leave entrance holes open in seed pods to allow access for attending ants. Ants and larvae of the Miami blue on balloonvine were found to die when roadside spraying for mosquito control began in late spring, but larvae of the silver-banded hairstreak (also on balloonvine) apparently survived subsequent spraying (Emmel 1991, p. 13). However, Minno (pers. comm. 2010) argues that larvae using balloonvine pods would be protected from the effects of pesticides because the pods have internal partitions and exposure would be limited due to the size of the entrance hole.

No mosquito control pesticides are used within KWNWR. At BHSP, the only application of adulticides (permethrin) is occasional truck-based spraying in the ranger residence areas (E. Kiefer, pers. comm. 2011a). Mosquito control practices currently pose no risk to the Miami blue within KWNWR or in formerly occupied habitat at BHSP. However, mosquito control activities, including the use of larvicides and adulticides, are being implemented within suitable and potential habitat for the Miami blue elsewhere in its range (Carroll and Loye 2006, pp. 14–15). The findings of Zhong *et al.* (2010, pp. 1961–1972) and Pierce (2009, pp. 1–17) along with other studies suggest that aerial or truck-based applications of mosquito control chemicals may pose a threat to the Miami blue, if the butterfly exists in other, unknown locations. Additionally, mosquito control practices potentially may limit expansion of undocumented populations or colonization of new areas. If the Miami blue colonizes new areas or if additional populations are discovered or reintroduced, adjustments in mosquito control (and other) practices may be needed to help safeguard the subspecies.

Efforts are already underway by multiple agencies and partners to seek ways to avoid and minimize impacts to the Miami blue and other imperiled nontarget species. For example, in an effort to reduce the need for aerial adulticide spraying, the FKMCD is increasing larviciding activities, which are believed to have less of an ecological impact on wilderness islands near NKDR and GWHNWR (FKMCD 2009, pp. 3–4). This effort has led to a reduction in area receiving adulticide treatment on Big Pine Key, No Name Key, and Torch Key (FKMCD 2009, p. 17). Another example is the Florida Coordinating Council on Mosquito Control (FCCMC), including the Imperiled Species Subcommittee, which was initially formed to resolve the conflict between mosquito control spraying and the reintroduction of Miami blues to their historical range (FWC 2010, p. 9).

The FWC's management plan for the Miami blue also recommends the use of no-spray zones for all pesticides and use of buffers at or around Miami blue populations and other conservation measures (FWC 2010, pp. ii-41). However, there are no specific binding or mandatory restrictions to prohibit such practices or encourage other beneficial measures. The FWC plan suggests that an aerial no-spray buffer zone of 820 yards (750 m) be established around Miami blue populations where possible and that buffer zones for truck-based applications of adulticides also be established (FWC 2010, p. 17). The FCCMC also recommends that the appropriate width of buffer zones be determined by future research. The Service is supporting research to characterize drift from truck-based spraying methods. The data from this study will aid in better determining appropriate buffer distances around sensitive areas.

In summary, although substantial progress has been made in reducing impacts, the potential effects of mosquito control applications and drift residues remain a threat to the Miami blue. We will continue to work with the mosquito control districts and other partners and stakeholders to reduce threats wherever possible.

Effects of Small Population Size and Isolation

The Miami blue is vulnerable to extinction due to its severely reduced range, small population size, metapopulation structure, few remaining populations, and relative isolation. In general, isolation, whether caused by geographic distance, ecological factors, or reproductive strategy, will likely prevent the influx of new genetic material and can result in low diversity, which may impact viability and fecundity (Chesser 1983, pp. 66–77). Extinction risk can increase significantly with decreasing heterozygosity as was reported for the Glanville fritillary (Saccheri *et al.* 1998, pp. 491–494). Distance between metapopulations and colonies within those metapopulations and the small size of highly sporadic populations can make recolonization unlikely if populations are extirpated. Fragmentation of habitat and aspects of the butterfly's natural history (*e.g.,* limited dispersal, reliance on host plants) can contribute to and exacerbate threats.

Estimated abundance of the Miami blue is not known, but may number in the hundreds, and at times, possibly higher. Although highly dependent upon species, a population of 1,000 has been suggested as marginally viable for an insect (D. Schweitzer, The Nature Conservancy, pers. comm. 2003). Schweitzer (pers. comm. 2003) has also suggested that butterfly populations of less than 200 adults per generation would have difficulty surviving over the long term. In comparison, in a review of 27 recovery plans for listed insect species, Schultz and Hammond (2003, p. 1377) found that 25 plans broadly specified metapopulation features in terms of requiring that recovery include multiple population areas (the average number of sites required was 8.2). The three plans that quantified minimum population sizes as part of their recovery criteria for butterflies ranged from 200 adults per site (Oregon silverspot [*Speyeria zerene hippolyta*]) to 100,000 adults (Bay checkerspot [*Euphydryas editha bayensis*]) (Schulz and Hammond 2003, pp. 1374–1375).

Schultz and Hammond (2003, pp. 1372–1385) used population viability analyses to develop quantitative recovery criteria for insects whose population sizes can be estimated and applied this framework in the context of the Fender's blue (*Icaricia icarioides fenderi*), a butterfly listed as endangered in 2000 due to its small population size and limited remaining habitat. They found the Fender's blue to be at high risk of extinction at most of its sites throughout its range despite that fact that the average population at 12 sites examined ranged from 5 to 738 (Schulz and Hammond 2003, pp. 1377, 1379). Of the three sites with populations greater than a few hundred butterflies, only one of these had a reasonably high probability of surviving the next 100 years (Schulz and Hammond 2003, p. 1379). Although the conservation needs and biology of the Miami blue and Fender's blue are undoubtedly different, the two lycaenids share characteristics: both have limited dispersal, and most remaining habitat patches are completely isolated.

Losses in diversity within historical and current populations of the Miami blue butterfly have already occurred. Historical populations were genetically more diverse than two contemporary populations (BHSP and KWNWR) (Saarinen 2009, p. 48). Yet together, between the two contemporary populations, the Miami blue had retained a significant amount of genetic diversity from its historical values

(Saarinen 2009, p. 51). Despite likely fluctuations in population size, the BHSP population had retained an adequate amount of genetic diversity to maintain the population (Saarinen 2009, p. 77). Overall, patterns of genetic diversity in the BHSP population (mean overall observed heterozygosity of 39.5 percent) were similar to or slightly lower than other nonmigratory butterfly species' studies utilizing microsatellite markers (Saarinen 2009, pp. 50, 74–75). Unfortunately, the BHSP population may now be lost. The extant KWNWR population is more genetically diverse (mean observed heterozygosity of 51 percent vs. 39.5 percent for BHSP) (Saarinen 2009, p. 75).

The Miami blue appears to have been impacted by relative isolation. No gene flow has occurred between contemporary populations (Saarinen *et al.* 2009a, p. 36). Saarinen (2009, p. 79) suggests that the separation was recent. While historical populations may have once linked the two contemporary populations, the recent absence of populations between KWNWR and BHSP appears to have broken the gene flow (Saarinen 2009, p. 79). Based upon modeling with a different butterfly species, Fleishman *et al.* (2002, pp. 706–716) argued that factors such as habitat quality may influence metapopulation dynamics, driving extinction and colonization processes, especially in systems that experience substantial natural and anthropogenic environmental variability (see Environmental stochasticity below).

According to Saarinen *et al.* (2009a, p. 36), the severely reduced size of the existing populations suggests that genetic factors along with environmental stochasticity may already be affecting the persistence of the Miami blue. However, they also suggested that, in terms of extinction risk, a greater short-term problem for the two contemporary natural populations (BHSP and KWNWR) may be the lack of gene flow rather than the current effective population size (Saarinen *et al.* 2009a, p. 36). If only one or two metapopulations remain, it is absolutely critical that remaining genetic diversity and gene flow are retained. Conservation decisions to augment or reintroduce populations should not be made without careful consideration of habitat availability, genetic adaptability, the potential for the introduction of maladapted genotypes, and other factors (Frankham 2008, pp. 325–333; Saarinen *et al.* 2009a, p. 36).

Aspects of Its Natural History

Aspects of the Miami blue's natural history may increase the likelihood of extinction. Cushman and Murphy (1993, p. 40) argued that dispersal is essential for the persistence of isolated populations. Input of individuals from neighboring areas can bolster dwindling numbers and provide an influx of genetic diversity, increasing fitness and population viability. The tendency for lycaenids to be comparatively sedentary should result in less frequent recolonization, less influx of individuals, and reduced gene flow between populations (Cushman and Murphy 1993, p. 40). In short, taxa with limited dispersal abilities may be far more susceptible to local extinction events than taxa with well-developed abilities (Cushman and Murphy 1993, p. 40).

Lycaenids with a strong dependence on ants may be more sensitive to environmental changes and thus more prone to endangerment and extinction than species not tended by ants (and non-lycaenids in general) (Cushman and Murphy 1993, pp. 37, 41). Their hypothesis is based on the probability that the combination of both the right food plant and the presence of a particular ant species may occur relatively infrequently in the landscape. Selection may favor reduced dispersal by ant-associated lycaenids due to the difficulty associated with locating patches that contain the appropriate combination of food plants and ants (Cushman and Murphy 1993, pp. 39–40). Although significant research on the relationship between Miami blue larvae and ants has been conducted, this association is still not completely understood. Lycaenid traits (sedentary, host-specific, symbiotic with ants) that result in isolated populations of variable sizes may serve to limit genetic exchange (Cushman and Murphy 1993, pp. 37, 39–40). The Miami blue possesses several of these traits, all of which may increase susceptibility and contribute to imperilment.

Environmental Stochasticity

The climate of the Keys is driven by a combination of local, regional, and global events, regimes, and oscillations. There are three main ''seasons'': (1) The wet season, which is hot, rainy, and humid from June through October, (2) the official hurricane season that extends one month beyond the wet season (June 1 through November 30) with peak season being August and September, and (3) the dry season, which is drier and cooler from November through May. In the dry season, periodic surges of cool and dry continental air masses influence the weather with short-duration rain events followed by long periods of dry weather.

Environmental factors have likely impacted the Miami blue and its habitat within its historical range. A hard freeze in the late 1980s likely contributed to the Miami blue's decline (L. Koehn, pers. comm. 2002) presumably due to loss of larval host plants in south Florida. Prolonged cold temperatures in January 2010 and December 2010 through January 2011 may have also impacted the remaining metapopulations in the Keys. Unseasonably cold temperatures during winter 2010 (in combination with impacts from iguanas) resulted in a substantial loss of nickerbean and nectar sources at BHSP. This reduction, albeit temporary, may have severely impacted an already depressed Miami blue population on the island. Similarly, extended dry conditions and drought can affect the availability of host plants and nectar sources and affect butterfly populations (Emmel and Daniels 2004, pp. 13–14, 17). Depressed numbers of the Miami blue at BHSP in 2008 were attributed to severe drought (Emmel and Daniels 2009, p. 4).

The Keys are regularly threatened by tropical storms and hurricanes. No area of the Keys is more than 20 feet (6.1 m) above sea level (and many areas are only a few feet (meters) in elevation). These tropical systems have affected the Miami blue and its habitat. Calhoun *et al.* (2002, p. 18) indicated that Hurricane Andrew in 1992 may have negatively impacted the majority of Miami blue populations in southern Florida. In 2005, four hurricanes (Katrina, Dennis, Rita, and Wilma) affected habitat at BHSP, resulting in reduced abundance of Miami blues following the storms that continued throughout 2006 (Salvato and Salvato 2007, p. 160) and beyond (Emmel and Daniels 2009, p. 4). A significant portion of the nickerbean and large stands of nectar plants at BHSP were temporarily damaged by the storms, including roughly 50 percent of the vegetation on the southern side of the island (Salvato and Salvato 2007, p. 157). Although the host plant quickly recovered following the storms (Salvato and Salvato 2007, p. 160), the Miami blue never fully recolonized several parts of the island (Emmel and Daniels 2009, p. 4).

Similarly, Hurricane Wilma heavily damaged blackbead across many islands within KWNWR (Cannon *et al.* 2010, p. 850). Although the hurricane severely damaged or killed much of the Miami blue host plant on KWNWR, it is also believed to have enhanced or created many new habitats across the islands by clearing older vegetation and opening patches for growth of host plant and nectar sources (Cannon *et al.* 2010, p.

852). Cannon *et al.* (2010, p. 852) suggest that the proximity and circular arrangement of these islands may provide some safeguard during mild or moderate storms. Given enough resiliency in extant populations, certain storm regimes may benefit populations over some timeframe if these events result in disturbances that favor host plants and other habitat components.

According to the Florida Climate Center, Florida is by far the most vulnerable State in the United States to hurricanes and tropical storms (*http://coaps.fsu.edu/climate_center/tropicalweather.shtml*). Based on data gathered 1856–2008, Klotzbach and Gray (2009, p. 28) calculated the climatological and current-year probabilities for each State being impacted by a hurricane and major hurricane. Of the coastal States analyzed, Florida had the highest climatological probabilities, with a 51 percent probability of a hurricane and a 21 percent probability of a major hurricane over a 52-year time span. Florida had a 45 percent current-year probability of a hurricane and an 18 percent current-year probability of a major hurricane (Klotzbach and Gray 2009, p. 28). Given the Miami blue's low population size and few isolated occurrences, the subspecies is at substantial risk from hurricanes, storm surges, or other extreme weather. Depending on the location and intensity of a hurricane or other severe weather event, it is possible that the Miami blue could be extirpated or could become extinct. Because it has poor dispersal capabilities, natural recolonization of potentially suitable sites is anticipated to be unlikely or exceedingly slow at best.

Other processes to be affected by climate change include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity). Temperatures are predicted to rise from 2 °C to 5 °C for North America by the end of this century (IPCC 2007, pp. 7–9, 13). Based upon modeling, Atlantic hurricane and tropical storm frequencies are expected to decrease (Knutson *et al.* 2008, pp. 1–21). By 2100, there should be a 10–30 percent decrease in hurricane frequency with a 5–10 percent wind increase. This is due to more hurricane energy available for intense hurricanes. However, hurricane frequency is expected to drop due to more wind shear impeding initial hurricane development. In addition to climate change, weather variables are extremely influenced by other natural cycles, such as El Niño Southern Oscillation with a frequency of every 4–7 years, solar cycle (every 11 years), and the Atlantic Multi-decadal Oscillation. All of these cycles influence changes in Floridian weather. The exact magnitude, direction, and distribution of all of these changes at the regional level are difficult to predict.

We have identified a wide array of natural or manmade factors affecting the continued existence of the Miami blue butterfly. These threats have operated in the past, are impacting the subspecies now, and will continue to impact the species in the foreseeable future. Based on our analysis of the best available information, we have no reason to believe that natural or manmade factors will change in the foreseeable future.

Determination of Status

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Miami blue butterfly. The habitat and range of the subspecies are threatened with destruction, modification, and curtailment from human population growth, associated development and agriculture, and environmental effects resulting from climatic change. Due to the few metapopulations, small population size, restricted range, and remoteness of occupied habitat, collection is a significant threat to the subspecies and could potentially occur at any time. Additionally, the subspecies is currently threatened by a wide array of natural and manmade factors. Existing regulatory mechanisms do not provide adequate protection for the subspecies. As a result, impacts from increasing threats, singly or in combination, are likely to result in the extinction of the subspecies because the magnitude of threats is high.

Section 3 of the Endangered Species Act defines an endangered species as ''* * * any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as ''* * * any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Based on the immediate and ongoing significant threats to the Miami blue butterfly throughout its entire occupied range and the fact that the subspecies is restricted to only one or possibly two populations, we have determined that the subspecies is in danger of extinction throughout all of its range. Since threats extend throughout the entire range, it is unnecessary to determine if the Miami blue butterfly is in danger of extinction throughout a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we have determined that the Miami blue butterfly meets the definition of an endangered species under the Act. Consequently, we are listing the Miami blue butterfly as an endangered species throughout its entire range.

Reasons for Emergency Determination

Under section 4(b)(7) of the Act and regulations at 50 CFR 424.20, we may emergency list a species if the threats to the species constitute an emergency posing a significant risk to its well-being. Such an emergency listing expires 240 days following publication in the **Federal Register** unless, during this 240-day period, we list the species following the normal listing procedures. Below, we discuss the reasons why emergency listing the Miami blue butterfly as endangered is warranted. In accordance with the Act, if at any time after we publish this emergency rule, we determine that substantial evidence does not exist to warrant such a rule, we will withdraw it.

In making this determination, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Miami blue butterfly. The only confirmed metapopulation of Miami blue is currently restricted to a few, small insular areas in the extreme southern portion of its historical range. The range of this butterfly, which once extended from the Keys north along the Florida coasts to about St. Petersburg and Daytona, is now substantially reduced, with an estimated > 99 percent decline in area occupied. Population size is unknown, but estimated to be in the hundreds. Since only one or possibly two small metapopulations remain in KWNWR, the Miami blue butterfly is imminently threatened by its restricted range and the combined influences of habitat destruction or modification, impacts by iguanas, accidental harm from humans, loss of genetic heterogeneity, and catastrophic environmental events. Illegal collection could cause severe impacts, given the few populations and individuals remaining. Therefore, we find these threats constitute an immediate and significant risk to the well-being of the species and that extinction of the Miami blue butterfly may occur at any time.

We believe that the survival of the Miami blue now depends on protecting the species' occupied and suitable habitat from further degradation and fragmentation; restoring potentially suitable habitat within its historical range; removing and reducing threats from iguanas, pesticides, and accidental

harm from humans; increasing the current population in size; reducing the threats of illegal collection; retaining the remaining genetic diversity; and, establishing populations at additional locations. The survey and monitoring efforts and scientific studies conducted to date, when combined with other available historical information, make it clear that the Miami blue butterfly is on the brink of extinction.

By emergency listing the Miami blue butterfly as an endangered subspecies, we believe the protections (through sections 7, 9, and 10 of the Act) and recognition that immediately become available to the subspecies will increase the likelihood that it can be saved from extinction and ultimately be recovered. In addition, if protections remain in place after the 240-day period, recovery funds may become available, which could facilitate recovery actions (*e.g.,* funding for additional surveys, management needs, research, captive propagation and reintroduction, monitoring) (see Available Conservation Measures).

The Service acknowledges that it cannot fully address some of the natural threats facing the subspecies (*e.g.,* hurricanes, tropical storms) or even some of the other significant, long-term threats (*e.g.,* climatic changes, sea-level rise). However, through emergency listing, we provide immediate protection to the known population(s) and any new population of the subspecies that may be discovered (see section 9 of Available Conservation Measures below). With emergency listing, we can also influence Federal actions that may potentially impact the subspecies (see section 7 below); this is especially valuable if it is found at additional locations. With emergency listing, we are also better able to deter illicit collection and trade.

Through this action, the Miami blue and the three butterflies that are similar in appearance will receive immediate protection from collection, possession, and trade (through sections 9 and 10 of the Act). At present, the three similar butterflies are not protected by the State. Extending the prohibitions of collection, possession, and trade to the three similar butterflies provides greater protection to the Miami blue. This immediate protection will help to deter those who might otherwise seek to collect the Miami blue before a proposed rule could be finalized (*i.e.,* through the normal listing process). At this time, the normal listing timeframe and process is insufficient to prevent losses that may result in extinction. We believe emergency listing will partially alleviate some of the imminent threats that now pose a significant risk to the survival of the subspecies.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernment organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Through this listing, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. Additionally, under section 6 of the Act, we would be able to grant funds to the State of Florida for management actions promoting the conservation of the Miami blue. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the Miami blue. Additionally, we invite you to submit any new information on the subspecies, its habitat, or threats whenever it becomes available and any information you may have for recovery planning purposes; if you submit information after the date listed in the **DATES** section above, you will need to send it to the street address provided in the **FOR FURTHER INFORMATION CONTACT** section.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to

ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may require conference or consultation as described in the preceding paragraph include the issuance of Federal funding, permits, or authorizations for construction, clearing, development, road maintenance, pesticide registration, pesticide use (on Federal land or with Federal funding), agricultural assistance programs, Federal loan and insurance programs, Federal habitat restoration programs, and scientific and special uses. Activities will trigger consultation under section 7 of the Act if they may affect the Miami blue butterfly, as addressed in this emergency rule.

Jeopardy Standard

Prior to and following listing, the Service applies an analytical framework for jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the species. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the species in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Section 9 Take

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions are applicable to the Miami blue butterfly immediately through emergency listing. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to attempt to commit, to solicit another person to commit, or to cause to be committed, any of these acts. Certain exceptions apply to our agents and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. We codified the regulations governing permits for endangered species at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in the course of otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act and associated regulations at 50 CFR 17.21. The intent of this policy is to increase public awareness of the effect of this emergency listing on proposed and ongoing activities within a species' range. We believe, based on the best available information, that the following actions will not result in a violation of the provisions of section 9 of the Act, provided these actions are carried out in accordance with existing regulations and permit requirements, if applicable:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxon that were collected or legally acquired prior to the effective date of this rule.

(2) Actions that may affect the Miami blue that are authorized, funded, or carried out by Federal agencies when such activities are conducted in accordance with an incidental take statement issued by us under section 7 of the Act.

(3) Actions that may affect the Miami blue that are not authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with an incidental take permit issued by us under section 10(a)(1)(B) of the Act. Applicants design a Habitat Conservation Plan (HCP) and apply for an incidental take permit. These HCPs are developed for species listed under section 4 of the Act and are designed to minimize and mitigate impacts to the species to the greatest extent practicable.

(4) Actions that may affect the Miami blue that are conducted in accordance with the conditions of a section 10(a)(1)(A) permit for scientific research or to enhance the propagation or survival of the subspecies.

(5) Captive propagation activities involving the Miami blue that are conducted in accordance with the conditions of a section 10(a)(1)(A) permit, our ''Policy Regarding Controlled Propagation of Species Listed Under the Endangered Species Act,'' and in cooperation with the State of Florida.

(6) Low-impact, infrequent, dispersed human activities on foot (*e.g.,* bird watching, butterfly watching, sightseeing, backpacking, photography, camping, hiking) in areas occupied by the Miami blue or where its host and nectar plants are present.

(7) Activities on private lands that do not result in take of the Miami blue butterfly, such as normal landscape activities around a personal residence, construction that avoids butterfly habitat, and pesticide/herbicide application consistent with label restrictions, if applied in areas where the subspecies is absent.

We believe the following activities would be likely to result in a violation of section 9 of the Act; however, possible violations are not limited to these actions alone:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including interstate and foreign commerce, or harming or attempting any of these actions, of Miami blue butterflies at any life stage without a permit (research activities where Miami blue butterflies are surveyed, captured (netted), or collected will require a permit under section 10(a)(1)(A) of the Act).

(2) Incidental take of Miami blue butterfly without a permit pursuant to section 10 (a)(1)(B) of the Act.

(3) Sale or purchase of specimens of this taxon, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act.

(4) Unauthorized destruction or alteration of Miami blue butterfly habitat (including unauthorized grading, leveling, plowing, mowing, burning, trampling, herbicide spraying, or other destruction or modification of occupied or potentially occupied habitat or pesticide application in known occupied habitat) in ways that kills or injures eggs, larvae, or adult Miami blue

butterflies by significantly impairing the subspecies' essential breeding, foraging, sheltering, or other essential life functions.

(5) Use of pesticides/herbicides that are in violation of label restrictions resulting in take of Miami blue butterfly or ants associated with the subspecies in areas occupied by the butterfly.

(6) Unauthorized release of biological control agents that attack any life stage of this taxon or ants associated with the Miami blue.

(7) Removal or destruction of native food plants being utilized by Miami blue butterfly, including *Caesalpinia* spp., *Cardiospermum* spp., and *Pithecellobium* spp., within areas used by this taxon that results in harm to this butterfly.

(8) Release of exotic species into occupied Miami blue butterfly habitat that may displace the Miami blue or its native host plants.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive, and provide them as information to the public.

You should direct questions regarding whether specific activities may constitute a future violation of section 9 of the Act to the Field Supervisor of the Service's South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, Endangered Species Permits, 1875 Century Boulevard, Atlanta, GA 30345 (Phone 404–679–7313; Fax 404–679–7081).

Critical Habitat and Prudency Determination

Critical habitat and prudency is addressed in the proposed listing rule, which is published concurrently with this emergency rule. In that rule, we determine that designation of critical habitat for the Miami blue butterfly is not prudent due to the increased likelihood and severity of threats to the subspecies from collection and destruction of sensitive habitat. Spatially depicting exactly where the subspecies may or could be found and more widely publicizing maps of specific areas containing essential features or essential areas is expected to expose the fragile population and its habitat to greater risks. In addition, designation of critical habitat will likely exacerbate enforcement problems.

Similarity of Appearance

Section 4(e) of the Act authorizes the treatment of a species, subspecies, or population segment as endangered or threatened if: ''(a) Such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.'' Listing a species as endangered or threatened under the similarity of appearance provisions of the Act extends the take prohibitions of section 9 of the Act to cover the species. A designation of endangered or threatened due to similarity of appearance under section 4(e) of the Act, however, does not extend other protections of the Act, such as consultation requirements for Federal agencies under section 7 and the recovery planning provisions under section 4(f), that apply to species that are listed as endangered or threatened under section 4(a). All applicable prohibitions and exceptions for species listed under section 4(e) of the Act due to similarity of appearance to a threatened or endangered species will be set forth in a special rule under section 4(d) of the Act.

There are only slight morphological differences between the Miami blue and the cassius blue, ceraunus blue, and nickerbean blue, making it difficult to differentiate between the species, especially due to their small size. This poses a problem for Federal and State law enforcement agents trying to stem illegal collection and trade in the Miami blue. It is quite possible that collectors authorized to collect similar species may inadvertently (or purposefully) collect the Miami blue butterfly thinking it was the cassius blue, ceraunus blue, or nickerbean blue, which also occur in the same geographical area and habitat type. The listing of these similar blue butterflies as threatened due to similarity of appearance eliminates the ability of amateur butterfly enthusiasts and private and commercial collectors to purposefully or accidentally misrepresent the Miami blue as one of these other species. The listing will also facilitate Federal and State law enforcement agents' efforts to curtail illegal possession, collection, and trade in the Miami blue. At this time, the three similar butterflies are not protected by the State. Extending the prohibitions of collection, possession, and trade to the three similar butterflies through this listing of these species due to similarity of appearance under section 4(e) of the Act and providing applicable prohibitions and exceptions under section 4(d) of the Act will provide greater protection to the Miami blue. For these reasons, we are listing the cassius blue butterfly (*Leptotes cassius theonus*), ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), and nickerbean blue butterfly (*Cyclargus ammon*) as threatened due to similarity of appearance to the Miami blue, pursuant to section 4(e) of the Act.

Special Rule Under Section 4(d) of the Act

Whenever a species is listed as a threatened species under the Act, the Secretary may specify regulations that he deems necessary and advisable to provide for the conservation of that species under the authorization of section 4(d) of the Act. These rules, commonly referred to as ''special rules,'' are found in part 17 of title 50 of the Code of Federal Regulations (CFR) in sections 17.40–17.48. This special rule for 17.47, which is reserved, prohibits take of any cassius blue butterfly (*Leptotes cassius theonus*), ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), or nickerbean blue butterfly (*Cyclargus ammon*) or their immature stages throughout their ranges in order to protect the Miami blue butterfly from collection, possession, and trade. In this context, collection and trade are defined as any activity where cassius blue, ceraunus blue, or nickerbean blue butterflies or their immature stages are attempted to be, or are intended to be, kept, traded, sold, or exchanged for goods or services. Capture of cassius blue, ceraunus blue, or nickerbean blue butterflies, or their immature stages, is not prohibited if it is accidental or incidental to otherwise legal collection activities, such as research, provided the animal is released immediately upon discovery at the point of capture. Scientific activities involving collection or propagation of these similarity of appearance butterflies are not prohibited provided there is prior written authorization from the Service. All otherwise legal activities involving cassius blue, ceraunus blue, or nickerbean blue butterflies that are conducted in accordance with applicable State, Federal, Tribal, and local laws and regulations are not considered to be take under this regulation.

Effects of These Rules

Listing the cassius blue, ceraunus blue, and nickerbean blue butterflies as threatened under the ''similarity of appearance'' provisions of the Act, and the promulgation of a special rule under section 4(d) of the Act, extend take prohibitions to these species and their immature stages. Capture of these species, including their immature stages, is not prohibited if it is accidental or incidental to otherwise legal collection activities, such as research, provided the animal is released immediately upon discovery, at the point of capture. However, this emergency rule establishes immediate prohibitions on the possession, collection, and trade of these species throughout their ranges in the United States. Likewise, this emergency rule immediately prohibits the import and export of these subspecies, and therefore may have an effect on commercial and non-commercial trade within the United States.

There are over 60 species and subspecies of butterflies within the *Cyclargus, Leptotes, Hemiargus* and *Pseudochrysops* genera, occurring domestically and internationally, that could be confused with the Miami blue butterfly, or the three similarity of appearance butterflies. We are aware that legal trade in some of these other blue butterflies exists. To avoid confusion and delays in legal trade, we strongly recommend maintaining the appropriate documentation and declarations with legal specimens at all times, especially when importing them into the United States. Legal trade of other species that may be confused with the Miami blue butterfly or the three similarity of appearance butterflies should also comply with the import/export transfer regulations under 50 CFR 14, where applicable.

All otherwise legal activities that may involve incidental take (take that results from, but is not the purpose of, carrying out an otherwise lawful activity) of these similar butterflies, and which are conducted in accordance with applicable State, Federal, Tribal, and local laws and regulations, will not be considered take under this regulation. For example, this special 4(d) rule exempts legal application of pesticides, yard care, vehicle use, vegetation management, exotic plant removal, burning, and any other legally undertaken actions that result in the accidental take of cassius blue, ceraunus blue, or nickerbean blue butterflies. These actions will not be considered as violations of section 9 of the Act. We believe that listing the cassius blue, ceraunus blue, and nickerbean blue butterflies under the similarity of appearance provision of the Act, coupled with this special 4(d) rule, will help minimize enforcement problems and enhance conservation of the Miami blue.

We believe that this provision to allow incidental take of these three similar butterflies will not pose a threat to the Miami blue because: (1) Activities such as yard care and vegetation control in developed or commercial areas that are likely to result in take of the cassius blue, ceraunus blue, and nickerbean blue are not likely to affect the Miami blue, and (2) the primary threat that activities concerning the cassius blue, ceraunus blue, and nickerbean blue butterflies pose to the Miami blue comes from collection and commercial trade.

Required Determinations

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) Use the active voice to address readers directly; (c) Use clear language rather than jargon; (d) Be divided into short sections and sentences; and (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us page numbers and the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Paperwork Reduction Act (44 U.S.C. 3501, et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this emergency rule is the staff of the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding new entries for the following, in alphabetical order under *Insects,* to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
INSECTS							
*	*	*	*	*	*	*	*
Butterfly, cassius blue ..	*Leptotes cassius theonus.*	U.S.A. (FL), Bahamas, Greater Antilles, Cayman Islands.	NA	T(S/A)		NA	17.47(a)
Butterfly, ceraunus blue	*Hemiargus ceraunus antibubastus.*	U.S.A. (FL), Bahamas	NA	T(S/A)		NA	17.47(a)
*	*	*	*	*	*	*	*
Butterfly, Miami blue	*Cyclargus thomasi bethunebakeri.*	U.S.A. (FL), Bahamas	NA	E		NA	NA
*	*	*	*	*	*	*	*
Butterfly, nickerbean blue.	*Cyclargus ammon*	U.S.A. (FL), Bahamas, Cuba.	NA	T(S/A)		NA	17.47(a)
*	*	*	*	*	*	*	*

■ 3. In subpart D, add § 17.47 to read as follows:

§ 17.47 Special rules—insects.

(a) Cassius blue butterfly (*Leptotes cassius theonus*), Ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), and Nickerbean blue butterfly (*Cyclargus ammon*).

(1) All provisions of § 17.31 apply to these species (cassius blue butterfly, ceraunus blue butterfly, nickerbean blue butterfly), regardless of whether in the wild or in captivity, and also apply to the progeny of any such butterfly.

(2) Any violation of State law will also be a violation of the Act.

(3) Incidental take, that is, take that results from, but is not the purpose of, carrying out an otherwise lawful activity, will not apply to the cassius blue butterfly, ceraunus blue butterfly, and nickerbean blue butterfly.

(b) [Reserved]

Dated: July 27, 2011.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–19812 Filed 8–9–11; 8:45 am]

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 20, and 25

Use of Actuarial Tables in Valuing Annuities, Interests for Life or Terms of Years, and Remainder or Reversionary Interests; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[TD 9540]

RIN 1545–BH67

Use of Actuarial Tables in Valuing Annuities, Interests for Life or Terms of Years, and Remainder or Reversionary Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests. These regulations will affect the valuation of inter vivos and testamentary transfers of interests dependent on one or more measuring lives. These regulations are necessary because section 7520(c)(3) directs the Secretary to update the actuarial tables to reflect the most recent mortality experience available.

DATES: *Effective Date:* These regulations are effective on August 10, 2011.

Applicability Date: These regulations apply on August 10, 2011.

FOR FURTHER INFORMATION CONTACT: Mayer R. Samuels, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2009, the IRS published in the **Federal Register** (74 FR 21438 and 74 FR 21519) final and temporary regulations (TD 9448) and a notice of proposed rulemaking by cross reference to temporary regulations (REG–107845–08) under sections 642, 664, 2031, 2512, and 7520 relating to the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests. No written comments responding to the notice of proposed rulemaking by cross reference to temporary regulations were received and, thus, no hearing was held. An example was deleted under section 2032 and it is anticipated that it instead will be included in a different regulation project under that section. The proposed regulations by cross reference to the temporary regulations, without any other substantive change, are adopted as final regulations.

The following chart summarizes the applicable interest rates and the citations to textual materials and tables for the various periods covered under the current regulations:

CROSS REFERENCE TO REGULATION SECTIONS

Valuation period	Interest rate	Regulation section	Table
Section 642:			
Valuation, in general	.....	1.642(c)–6.	
before 01/01/52	4%	1.642(c)–6A(a).	
01/01/52–12/31/70	3.5%	1.642(c)–6A(b).	
01/01/71–11/30/83	6%	1.642(c)–6A(c).	
12/01/83–04/30/89	10%	1.642(c)–6A(d)	Table G.
05/01/89–04/30/99	§ 7520	1.642(c)–6A(e)	Table S (05/01/89–04/30/99).
05/01/99–04/30/09	§ 7520	1.642(c)–6A(f)	Table S (05/01/99–04/30/09).
on or after 05/01/09	§ 7520	1.642(c)–6(e)	Table S (on or after 05/01/09).
Section 664:			
Valuation, in general	.....	1.664–4.	
before 01/01/52	4%	1.664–4A(a).	
01/01/52–12/31/70	3.5%	1.664–4A(b).	
01/01/71–11/30/83	6%	1.664–4A(c).	
12/01/83–04/30/89	10%	1.664–4A(d)	Table E, Table F(1).
05/01/89–04/30/99	§ 7520	1.664–4A(e)	Table U(1) (05/01/89–04/30/99).
05/01/99–04/30/09	§ 7520	1.664–4A(f)	Table U(1) (05/01/99–04/30/09).
on or after 05/01/09	§ 7520	1.664–4(e)	Table D, Tables F(4.2)–F(14.0), and Table U(1) (on or after 05/01/09).
Section 2031:			
Valuation, in general	.....	20.2031–7.	
before 01/01/52	4%	20.2031–7A(a).	
01/01/52–12/31/70	3.5%	20.2031–7A(b).	
01/01/71–11/30/83	6%	20.2031–7A(c).	
12/01/83–04/30/89	10%	20.2031–7A(d)	Table A, Table B, Table LN.
05/01/89–04/30/99	§ 7520	20.2031–7A(e)	Table S (05/01/89–04/30/99) and Life Table 80CNSMT.
05/01/99–04/30/09	§ 7520	20.2031–7A(f)	Table S (05/01/99–04/30/09) and Life Table 90CM.
on or after 05/01/09	§ 7520	20.2031–7(d)	Table B, Table J, Table K, and Table S (on or after 05/01/09) and Life Table 2000CM.
Section 2512:			
Valuation, in general	.....	25.2512–5.	
before 01/01/52	4%	25.2512–5A(a).	
01/01/52–12/31/70	3.5%	25.2512–5A(b).	
01/01/71–11/30/83	6%	25.2512–5A(c).	
12/01/83–04/30/89	10%	25.2512–5A(d).	
05/01/89–04/30/99	§ 7520	25.2512–5A(e).	
05/01/99–04/30/09	§ 7520	25.2512–5A(f).	
on or after 05/01/09	§ 7520	25.2512–5(d).	

Effective Dates

These regulations are applicable in the case of annuities, interests for life or terms of years, and remainder or reversionary interests valued as of a date on or after May 1, 2009.

Special Analyses

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

Drafting Information

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

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, and 25 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for 1.170A–12T, 1.642(c)-6T, 1.664–4T and 1.7520–1T to read in part as follows:

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

■ **Par. 2.** Section 1.170A–12 is amended by revising paragraphs (b)(2), (b)(3), and (f) to read as follows:

§ 1.170A–12 Valuation of a remainder interest in real property for contributions made after July 31, 1969.

* * * * *

(b) * * *

(2) *Computation of depreciation factor.* If the valuation of the remainder interest in depreciable property is dependent upon the continuation of one life, a special factor must be used. The factor determined under this paragraph (b)(2) is carried to the fifth decimal place. The special factor is to be computed on the basis of the interest rate and life contingencies prescribed in § 20.2031–7 of this chapter (or for periods before May 1, 2009, § 20.2031–7A) and on the assumption that the property depreciates on a straight-line basis over its estimated useful life. For transfers for which the valuation date is on or after May 1, 2009, special factors for determining the present value of a remainder interest following one life and an example describing the computation are contained in Internal Revenue Service Publication 1459, ''Actuarial Valuations Version 3C'' (2009). This publication is available, at no charge, electronically via the IRS Internet site at *http://www.irs.gov*. For transfers for which the valuation date is after April 30, 1999, and before May 1, 2009, special factors for determining the present value of a remainder interest following one life and an example describing the computation are contained in Internal Revenue Service Publication 1459, ''Actuarial Values, Book Gimel,'' (7–99). For transfers for which the valuation date is after April 30, 1989, and before May 1, 1999, special factors for determining the present value of a remainder interest following one life and an example describing the computation are contained in Internal Revenue Service Publication 1459, ''Actuarial Values, Gamma Volume,'' (8–89). These publications are no longer available for purchase from the Superintendent of Documents, United States Government Printing Office. However, they may be obtained by requesting a copy from: CC:PA:LPD:PR (IRS Publication 1459), room 5205, Internal Revenue Service, P.O.Box 7604, Ben Franklin Station, Washington, DC 20044. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). Otherwise, in the case of the valuation of a remainder interest following one life, the special factor may be obtained through use of the following formula:

$$\left(1+\frac{i}{2}\right)\sum_{t=0}^{n-1} v^{t+1}\left[\left(1-\frac{l_{x+t+1}}{l_x}\right)-\left(1-\frac{l_{x+t}}{l_x}\right)\right]\left(1-\frac{1}{2n}-\frac{t}{n}\right)$$

Where:

n = the estimated number of years of useful life,

i = the applicable interest rate under section 7520 of the Internal Revenue Code,

v = 1 divided by the sum of 1 plus the applicable interest rate under section 7520 of the Internal Revenue Code,

x = the age of the life tenant, and

lx = number of persons living at age x as set forth in Table 2000CM of § 20.2031–7 of this chapter (or, for periods before May 1, 2009, the tables set forth under § 20.2031–7A).

(3) The following example illustrates the provisions of this paragraph (b):

Example. A, who is 62, donates to Y University a remainder interest in a personal residence, consisting of a house and land, subject to a reserved life estate in A. At the time of the gift, the land has a value of $30,000 and the house has a value of $100,000 with an estimated useful life of 45 years, at the end of which period the value of the house is expected to be $20,000. The portion of the property considered to be depreciable is $80,000 (the value of the house ($100,000) less its expected value at the end of 45 years ($20,000)). The portion of the property considered to be nondepreciable is $50,000 (the value of the land at the time of the gift ($30,000) plus the expected value of the house at the end of 45 years ($20,000)). At the time of the gift, the interest rate prescribed under section 7520 is 8.4 percent. Based on an interest rate of 8.4 percent, the remainder factor for $1.00 prescribed in § 20.2031–7(d) for a person age 62 is 0.26534. The value of the nondepreciable remainder interest is $13,267.00 (0.26534 times $50,000). The value of the depreciable remainder interest is $15,053.60 (0.18817, computed under the formula described in paragraph (b)(2) of this section, times

$80,000). Therefore, the value of the remainder interest is $28,320.60.

* * * * *

(f) *Effective/applicability date.* This section applies to contributions made after July 31, 1969, except that paragraphs (b)(2) and (b)(3) apply to all contributions made on or after May 1, 2009.

§ 1.170A–12T [Removed]

■ **Par. 3.** Section 1.170A–12T is removed.

■ **Par. 4.** Section 1.642(c)–6 is amended by revising paragraphs (d), (e), and (f) to read as follows:

§ 1.642(c)–6 Valuation of a remainder interest in property transferred to a pooled income fund.

* * * * *

(d) *Valuation.* The present value of the remainder interest in property transferred to a pooled income fund on or after May 1, 2009, is determined under paragraph (e) of this section. The present value of the remainder interest in property transferred to a pooled income fund for which the valuation date is before May 1, 2009, is determined under the following sections:

Valuation dates		Applicable regulations
After	Before	
—	01–01–52	1.642(c)–6A(a).
12–31–51	01–01–71	1.642(c)–6A(b).
12–31–70	12–01–83	1.642(c)–6A(c).
11–30–83	05–01–89	1.642(c)–6A(d).
04–30–89	05–01–99	1.642(c)–6A(e).
04–30–99	05–01–09	1.642(c)–6A(f).

(e) *Present value of the remainder interest in the case of transfers to pooled income funds for which the valuation date is on or after May 1, 2009*—(1) *In general.* In the case of transfers to pooled income funds for which the valuation date is on or after May 1, 2009, the present value of a remainder interest is determined under this section. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). The present value of a remainder interest that is dependent on the termination of the life of one individual is computed by the use of Table S in paragraph (e)(6) of this section. For purposes of the computations under this section, the age of an individual is the age at the individual's nearest birthday.

(2) *Transitional rules for valuation of transfers to pooled income funds.* (i) For purposes of sections 2055, 2106, or 2624, if on May 1, 2009, the decedent was mentally incompetent so that the disposition of the property could not be changed, and the decedent died on or after May 1, 2009, without having regained competency to dispose of the decedent's property, or the decedent died within 90 days of the date that the decedent first regained competency on or after May 1, 2009, the present value of a remainder interest is determined as if the valuation date with respect to the decedent's gross estate is either before or after May 1, 2009, at the option of the decedent's executor.

(ii) For purposes of sections 170, 2055, 2106, 2522, or 2624, in the case of transfers to a pooled income fund for which the valuation date is on or after May 1, 2009, and before July 1, 2009, the present value of the remainder interest under this section is determined by use of the appropriate yearly rate of return for the month in which the valuation date occurs (see §§ 1.7520–1(b) and 1.7520–2(a)(2)) and the appropriate actuarial tables under either paragraph (e)(6) of this section or § 1.642(c)–6A(f)(6), at the option of the donor or the decedent's executor, as the case may be.

(iii) For purposes of paragraphs (e)(2)(i) and (e)(2)(ii) of this section, where the donor or decedent's executor is given the option to use the appropriate actuarial tables under either paragraph (e)(6) of this section or § 1.642(c)–6A(f)(6), the donor or decedent's executor must use the same actuarial table with respect to each individual transaction and with respect to all transfers occurring on the valuation date (for example, gift and income tax charitable deductions with respect to the same transfer must be determined based on the same tables, and all assets includible in the gross estate and/or estate tax deductions claimed must be valued based on the same tables).

(3) *Present value of a remainder interest.* The present value of a remainder interest in property transferred to a pooled income fund is computed on the basis of—

(i) Life contingencies determined from the values of *lx* that are set forth in Table 2000CM in § 20.2031–7(d)(7) of this chapter (see § 20.2031–7A for certain prior periods); and

(ii) Discount at a rate of interest, compounded annually, equal to the highest yearly rate of return of the pooled income fund for the 3 taxable years immediately preceding its taxable year in which the transfer of property to the fund is made. For purposes of this paragraph (e), the yearly rate of return of a pooled income fund is determined as provided in paragraph (c) of this section unless the highest rate of return is deemed to be the rate described in paragraph (e)(4) of this section for funds in existence less than 3 taxable years. For purposes of this paragraph (e)(3)(ii), the first taxable year of a pooled income fund is considered a taxable year even though the taxable year consists of less than 12 months. However, appropriate adjustments must be made to annualize the rate of return earned by the fund for that period. Where it appears from the facts and circumstances that the highest yearly rate of return of the fund for the 3 taxable years immediately preceding the taxable year in which the transfer of property is made has been purposely manipulated to be substantially less than the rate of return that would otherwise be reasonably anticipated with the purpose of obtaining an excessive charitable deduction, that rate of return may not be used. In that case, the highest yearly rate of return of the fund is determined by treating the fund as a pooled income fund that has been in existence for less than 3 preceding taxable years.

(4) *Pooled income funds in existence less than 3 taxable years.* If a pooled income fund has been in existence less than 3 taxable years immediately preceding the taxable year in which the transfer is made to the fund and the transfer to the fund is made after April 30, 1989, the highest rate of return is deemed to be the interest rate (rounded to the nearest two-tenths of one percent) that is 1 percent less than the highest annual average of the monthly section 7520 rates for the 3 calendar years

immediately preceding the calendar year in which the transfer to the pooled income fund is made. The deemed rate of return for transfers to new pooled income funds is recomputed each calendar year using the monthly section 7520 rates for the 3-year period immediately preceding the calendar year in which each transfer to the fund is made until the fund has been in existence for 3 taxable years and can compute its highest rate of return for the 3 taxable years immediately preceding the taxable year in which the transfer of property to the fund is made in accordance with the rules set forth in the first sentence of paragraph (e)(3)(ii) of this section.

(5) *Computation of value of remainder interest.* (i) The factor that is used in determining the present value of a remainder interest that is dependent on the termination of the life of one individual is the factor from Table S in paragraph (e)(6) of this section under the appropriate yearly rate of return opposite the number that corresponds to the age of the individual upon whose life the value of the remainder interest is based (See § 1.642(c)–6A for certain prior periods). The tables in paragraph (e)(6) of this section include factors for yearly rates of return from 0.2 to 14 percent. Many actuarial factors not contained in the tables in paragraph (e)(6) of this section are contained in Table S in Internal Revenue Service Publication 1457, ''Actuarial Valuations Version 3A'' (2009). This publication is available, at no charge, electronically via the IRS Internet site at *http://www.irs.gov*. For other situations, see paragraph (b) of this section. If the yearly rate of return is a percentage that is between the yearly rates of return for which factors are provided, a linear interpolation must be made. The present value of the remainder interest is determined by multiplying the fair market value of the property on the valuation date by the appropriate remainder factor.

(ii) This paragraph (e)(5) may be illustrated by the following example:

Example. A, who is 54 years and 8 months, transfers $100,000 to a pooled income fund, and retains a life income interest in the property. The highest yearly rate of return earned by the fund for its 3 preceding taxable years is 9.47 percent. In Table S, the remainder factor opposite 55 years under 9.4 percent is .16192 and under 9.6 percent is .15755. The present value of the remainder interest is $16,039.00, computed as follows:

Factor at 9.4 percent for age 55	.16192
Factor at 9.6 percent for age 55	.15755
Difference	.00437

Interpolation adjustment:

$$\frac{9.47\% - 9.4\%}{0.2\%} = \frac{x}{.00437}$$

$$x = .00153$$

Factor at 9.4 percent for age 55	.16192
Less: Interpolation adjustment	.00153
Interpolated factor	.16039

Present value of remainder interest:

($100,000 X .16039) $16,039.00

(6) *Actuarial tables.* In the case of transfers for which the valuation date is on or after May 1, 2009, the present value of a remainder interest dependent on the termination of one life in the case of a transfer to a pooled income fund is determined by use of the following Table S:

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Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	0.2%	0.4%	0.6%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%
0	.85816	.73751	.63478	.54723	.47252	.40872	.35416	.30747	.26745	.23313
1	.85889	.73863	.63604	.54844	.47355	.40948	.35459	.30752	.26711	.23239
2	.86054	.74145	.63968	.55260	.47802	.41409	.35922	.31209	.27155	.23664
3	.86221	.74433	.64339	.55687	.48263	.41887	.36404	.31685	.27619	.24112
4	.86390	.74725	.64716	.56121	.48733	.42374	.36898	.32175	.28098	.24575
5	.86560	.75018	.65097	.56561	.49209	.42871	.37401	.32675	.28588	.25050
6	.86731	.75314	.65482	.57006	.49692	.43375	.37913	.33186	.29090	.25538
7	.86902	.75611	.65868	.57454	.50180	.43885	.38432	.33704	.29601	.26035
8	.87073	.75909	.66258	.57907	.50674	.44403	.38960	.34233	.30122	.26544
9	.87246	.76209	.66651	.58364	.51173	.44928	.39497	.34771	.30654	.27064
10	.87419	.76511	.67046	.58826	.51679	.45459	.40042	.35319	.31197	.27596
11	.87592	.76814	.67445	.59291	.52190	.45998	.40596	.35876	.31750	.28139
12	.87766	.77119	.67845	.59761	.52706	.46544	.41157	.36443	.32313	.28693
13	.87939	.77424	.68247	.60232	.53225	.47094	.41723	.37015	.32884	.29255
14	.88112	.77728	.68649	.60704	.53746	.47646	.42293	.37592	.33460	.29823
15	.88284	.78031	.69050	.61176	.54267	.48199	.42865	.38172	.34038	.30394
16	.88455	.78333	.69449	.61647	.54788	.48752	.43437	.38752	.34619	.30968
17	.88625	.78633	.69848	.62117	.55309	.49307	.44012	.39336	.35203	.31546
18	.88795	.78933	.70246	.62588	.55830	.49863	.44589	.39923	.35791	.32129
19	.88964	.79232	.70644	.63059	.56354	.50422	.45170	.40514	.36385	.32719
20	.89132	.79532	.71044	.63534	.56882	.50987	.45757	.41114	.36987	.33317
21	.89301	.79832	.71445	.64010	.57413	.51555	.46350	.41719	.37597	.33925
22	.89470	.80133	.71847	.64488	.57947	.52129	.46948	.42332	.38216	.34541
23	.89639	.80434	.72251	.64970	.58486	.52708	.47554	.42954	.38844	.35168
24	.89808	.80737	.72658	.65456	.59031	.53295	.48169	.43586	.39484	.35809
25	.89978	.81042	.73068	.65947	.59583	.53890	.48795	.44230	.40137	.36464
26	.90149	.81349	.73482	.66443	.60141	.54494	.49430	.44886	.40804	.37134
27	.90320	.81657	.73899	.66944	.60707	.55107	.50076	.45554	.41484	.37819
28	.90492	.81968	.74319	.67450	.61278	.55728	.50733	.46233	.42178	.38520
29	.90665	.82279	.74741	.67960	.61856	.56356	.51398	.46924	.42884	.39233
30	.90837	.82591	.75165	.68473	.62438	.56990	.52070	.47623	.43601	.39959
31	.91010	.82904	.75592	.68989	.63024	.57631	.52751	.48333	.44329	.40698
32	.91182	.83218	.76020	.69509	.63616	.58278	.53440	.49052	.45068	.41449
33	.91355	.83532	.76449	.70031	.64212	.58931	.54137	.49780	.45818	.42213
34	.91527	.83847	.76880	.70556	.64811	.59589	.54839	.50516	.46578	.42988

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	0.2%	0.4%	0.6%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%
35	.91700	.84162	.77312	.71082	.65414	.60253	.55549	.51261	.47347	.43774
36	.91872	.84477	.77744	.71611	.66021	.60921	.56266	.52014	.48127	.44572
37	.92043	.84792	.78178	.72142	.66631	.61594	.56989	.52774	.48916	.45381
38	.92215	.85107	.78613	.72675	.67244	.62272	.57718	.53544	.49715	.46201
39	.92386	.85422	.79048	.73210	.67860	.62955	.58453	.54320	.50523	.47032
40	.92557	.85736	.79483	.73746	.68479	.63641	.59194	.55104	.51340	.47873
41	.92727	.86050	.79918	.74283	.69100	.64331	.59940	.55894	.52165	.48724
42	.92896	.86364	.80354	.74820	.69723	.65024	.60690	.56691	.52998	.49585
43	.93065	.86677	.80789	.75359	.70348	.65721	.61447	.57495	.53840	.50457
44	.93234	.86990	.81225	.75899	.70976	.66422	.62208	.58305	.54690	.51338
45	.93402	.87302	.81660	.76439	.71605	.67125	.62973	.59122	.55547	.52228
46	.93569	.87613	.82095	.76980	.72236	.67832	.63743	.59945	.56413	.53129
47	.93735	.87924	.82530	.77521	.72867	.68541	.64517	.60773	.57286	.54037
48	.93901	.88233	.82964	.78062	.73501	.69253	.65295	.61606	.58166	.54955
49	.94065	.88541	.83397	.78604	.74135	.69967	.66077	.62446	.59053	.55882
50	.94229	.88849	.83830	.79145	.74771	.70684	.66864	.63292	.59949	.56819
51	.94393	.89156	.84263	.79688	.75409	.71404	.67655	.64143	.60852	.57766
52	.94556	.89462	.84695	.80230	.76048	.72127	.68450	.65001	.61763	.58722
53	.94717	.89767	.85126	.80772	.76687	.72852	.69249	.65863	.62680	.59687
54	.94878	.90070	.85555	.81313	.77326	.73577	.70050	.66730	.63603	.60658
55	.95037	.90371	.85983	.81853	.77964	.74302	.70851	.67598	.64530	.61635
56	.95195	.90670	.86406	.82388	.78599	.75024	.71651	.68465	.65457	.62613
57	.95351	.90965	.86827	.82920	.79230	.75744	.72448	.69332	.66384	.63593
58	.95505	.91257	.87243	.83447	.79857	.76459	.73242	.70195	.67309	.64573
59	.95657	.91546	.87655	.83970	.80479	.77170	.74033	.71057	.68233	.65553
60	.95807	.91832	.88064	.84490	.81098	.77879	.74822	.71918	.69158	.66534
61	.95955	.92115	.88469	.85005	.81713	.78584	.75608	.72776	.70081	.67515
62	.96101	.92395	.88869	.85515	.82323	.79283	.76388	.73630	.71001	.68494
63	.96245	.92670	.89265	.86020	.82926	.79977	.77164	.74479	.71917	.69470
64	.96387	.92942	.89655	.86518	.83524	.80665	.77933	.75323	.72828	.70443
65	.96527	.93210	.90040	.87011	.84116	.81346	.78697	.76162	.73735	.71411
66	.96665	.93476	.90423	.87502	.84706	.82027	.79461	.77002	.74645	.72385
67	.96802	.93739	.90803	.87990	.85292	.82705	.80223	.77841	.75554	.73359
68	.96937	.93999	.91179	.88472	.85874	.83378	.80980	.78676	.76461	.74331
69	.97070	.94255	.91549	.88949	.86449	.84044	.81731	.79504	.77362	.75299
70	.97200	.94506	.91914	.89419	.87016	.84702	.82473	.80326	.78256	.76260

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	0.2%	0.4%	0.6%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%
71	.97328	.94754	.92273	.89882	.87577	.85353	.83209	.81140	.79143	.77215
72	.97453	.94997	.92626	.90338	.88129	.85996	.83935	.81945	.80021	.78162
73	.97576	.95234	.92972	.90785	.88671	.86627	.84651	.82739	.80888	.79098
74	.97695	.95466	.93310	.91223	.89202	.87247	.85353	.83518	.81741	.80019
75	.97811	.95692	.93638	.91649	.89720	.87851	.86039	.84281	.82577	.80923
76	.97924	.95910	.93957	.92063	.90224	.88440	.86708	.85026	.83393	.81807
77	.98033	.96122	.94267	.92465	.90715	.89013	.87360	.85753	.84191	.82671
78	.98138	.96327	.94567	.92855	.91190	.89571	.87995	.86461	.84968	.83515
79	.98239	.96526	.94857	.93233	.91652	.90112	.88611	.87149	.85725	.84337
80	.98337	.96717	.95138	.93598	.92098	.90635	.89208	.87817	.86460	.85135
81	.98431	.96901	.95408	.93951	.92529	.91141	.89786	.88463	.87172	.85910
82	.98521	.97077	.95667	.94290	.92944	.91629	.90344	.89088	.87861	.86660
83	.98608	.97247	.95917	.94616	.93343	.92099	.90882	.89691	.88526	.87385
84	.98691	.97409	.96156	.94928	.93727	.92551	.91399	.90271	.89166	.88084
85	.98770	.97565	.96384	.95228	.94094	.92984	.91895	.90828	.89782	.88757
86	.98845	.97713	.96602	.95514	.94446	.93398	.92371	.91362	.90373	.89402
87	.98917	.97854	.96810	.95786	.94781	.93794	.92825	.91873	.90939	.90021
88	.98985	.97988	.97008	.96046	.95100	.94171	.93258	.92361	.91479	.90612
89	.99049	.98115	.97196	.96292	.95404	.94530	.93671	.92826	.91994	.91176
90	.99110	.98235	.97373	.96526	.95691	.94871	.94062	.93267	.92484	.91713
91	.99168	.98348	.97541	.96747	.95964	.95193	.94434	.93686	.92949	.92223
92	.99222	.98455	.97700	.96955	.96222	.95498	.94785	.94083	.93390	.92707
93	.99273	.98556	.97849	.97152	.96464	.95786	.95117	.94457	.93806	.93163
94	.99321	.98651	.97989	.97337	.96692	.96057	.95429	.94810	.94199	.93595
95	.99366	.98739	.98121	.97510	.96907	.96312	.95724	.95143	.94569	.94002
96	.99408	.98822	.98244	.97673	.97108	.96551	.95999	.95454	.94916	.94384
97	.99447	.98900	.98359	.97825	.97297	.96774	.96258	.95747	.95242	.94742
98	.99483	.98973	.98467	.97967	.97473	.96984	.96500	.96021	.95547	.95078
99	.99518	.99040	.98568	.98101	.97638	.97180	.96727	.96278	.95834	.95394
100	.99549	.99103	.98661	.98224	.97791	.97362	.96937	.96516	.96100	.95687
101	.99579	.99162	.98750	.98340	.97935	.97534	.97136	.96742	.96351	.95964
102	.99607	.99217	.98831	.98448	.98068	.97692	.97319	.96950	.96583	.96220
103	.99634	.99271	.98911	.98553	.98199	.97848	.97500	.97155	.96812	.96473
104	.99659	.99320	.98984	.98651	.98320	.97992	.97666	.97344	.97023	.96705
105	.99683	.99369	.99056	.98747	.98439	.98134	.97830	.97530	.97231	.96934
106	.99713	.99429	.99146	.98865	.98586	.98309	.98033	.97760	.97488	.97218
107	.99747	.99496	.99246	.98998	.98751	.98506	.98262	.98020	.97779	.97539
108	.99800	.99602	.99404	.99208	.99012	.98818	.98624	.98431	.98240	.98049
109	.99900	.99801	.99702	.99603	.99505	.99407	.99310	.99213	.99116	.99020

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	2.2%	2.4%	2.6%	2.8%	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
0	.20365	.17830	.15648	.13767	.12144	.10741	.09528	.08476	.07564	.06772
1	.20251	.17677	.15458	.13542	.11885	.10451	.09209	.08131	.07194	.06379
2	.20656	.18060	.15817	.13877	.12197	.10740	.09476	.08376	.07420	.06586
3	.21084	.18466	.16200	.14236	.12533	.11054	.09767	.08647	.07670	.06817
4	.21527	.18888	.16600	.14613	.12887	.11385	.10076	.08935	.07938	.07066
5	.21984	.19324	.17013	.15004	.13255	.11730	.10399	.09237	.08220	.07329
6	.22454	.19773	.17440	.15408	.13636	.12089	.10736	.09553	.08515	.07605
7	.22933	.20233	.17879	.15824	.14030	.12460	.11085	.09880	.08822	.07892
8	.23425	.20705	.18330	.16254	.14436	.12844	.11447	.10221	.09142	.08193
9	.23930	.21191	.18795	.16697	.14857	.13243	.11824	.10576	.09476	.08507
10	.24446	.21689	.19273	.17153	.15292	.13655	.12214	.10945	.09824	.08835
11	.24975	.22200	.19764	.17623	.15740	.14081	.12619	.11328	.10187	.09177
12	.25515	.22724	.20268	.18107	.16202	.14521	.13037	.11724	.10563	.09533
13	.26064	.23256	.20782	.18600	.16674	.14972	.13466	.12132	.10949	.09900
14	.26620	.23796	.21303	.19101	.17154	.15430	.13903	.12547	.11344	.10273
15	.27179	.24340	.21829	.19607	.17639	.15894	.14344	.12968	.11743	.10652
16	.27742	.24887	.22358	.20117	.18128	.16361	.14790	.13391	.12145	.11034
17	.28309	.25439	.22893	.20632	.18622	.16834	.15241	.13821	.12554	.11421
18	.28881	.25997	.23434	.21154	.19123	.17314	.15699	.14258	.12969	.11815
19	.29461	.26563	.23983	.21684	.19633	.17803	.16167	.14703	.13393	.12218
20	.30050	.27139	.24543	.22226	.20156	.18304	.16646	.15161	.13829	.12633
21	.30649	.27726	.25114	.22779	.20689	.18817	.17138	.15631	.14277	.13060
22	.31259	.28323	.25697	.23344	.21235	.19342	.17642	.16114	.14739	.13500
23	.31879	.28934	.26293	.23923	.21795	.19882	.18161	.16612	.15215	.13955
24	.32515	.29559	.26904	.24519	.22372	.20440	.18699	.17128	.15710	.14429
25	.33166	.30201	.27534	.25133	.22969	.21018	.19256	.17665	.16226	.14924
26	.33833	.30861	.28182	.25767	.23586	.21616	.19835	.18224	.16764	.15440
27	.34517	.31538	.28849	.26420	.24224	.22236	.20436	.18804	.17324	.15980
28	.35217	.32233	.29535	.27093	.24882	.22877	.21058	.19407	.17907	.16542
29	.35932	.32944	.30237	.27784	.25558	.23537	.21701	.20031	.18511	.17126
30	.36661	.33670	.30956	.28492	.26253	.24216	.22362	.20674	.19135	.17730
31	.37403	.34411	.31691	.29217	.26965	.24914	.23044	.21338	.19779	.18355
32	.38160	.35167	.32442	.29960	.27697	.25631	.23745	.22022	.20445	.19002
33	.38930	.35939	.33211	.30721	.28447	.26368	.24467	.22727	.21133	.19671
34	.39713	.36724	.33993	.31497	.29213	.27123	.25207	.23451	.21839	.20360

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	2.2%	2.4%	2.6%	2.8%	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
35	.40509	.37523	.34792	.32290	.29998	.27896	.25967	.24195	.22567	.21070
36	.41318	.38337	.35606	.33100	.30800	.28688	.26746	.24961	.23317	.21803
37	.42139	.39165	.36435	.33927	.31621	.29499	.27546	.25746	.24087	.22557
38	.42974	.40008	.37281	.34771	.32460	.30330	.28366	.26554	.24880	.23334
39	.43821	.40864	.38141	.35631	.33316	.31179	.29205	.27381	.25694	.24133
40	.44679	.41734	.39016	.36507	.34189	.32046	.30064	.28229	.26529	.24954
41	.45549	.42616	.39906	.37399	.35080	.32932	.30942	.29097	.27386	.25797
42	.46430	.43511	.40809	.38307	.35987	.33836	.31840	.29986	.28264	.26662
43	.47324	.44421	.41729	.39232	.36913	.34760	.32758	.30897	.29165	.27552
44	.48229	.45343	.42663	.40172	.37857	.35702	.33697	.31829	.30088	.28465
45	.49144	.46277	.43611	.41128	.38817	.36663	.34655	.32782	.31033	.29400
46	.50072	.47225	.44574	.42101	.39796	.37644	.35634	.33757	.32002	.30360
47	.51009	.48185	.45550	.43089	.40791	.38642	.36633	.34753	.32992	.31343
48	.51958	.49158	.46540	.44093	.41803	.39660	.37652	.35770	.34006	.32351
49	.52917	.50143	.47545	.45113	.42833	.40696	.38691	.36810	.35043	.33383
50	.53888	.51141	.48566	.46150	.43883	.41754	.39754	.37874	.36106	.34442
51	.54871	.52153	.49602	.47204	.44951	.42832	.40838	.38961	.37194	.35528
52	.55865	.53179	.50653	.48276	.46038	.43931	.41945	.40073	.38307	.36641
53	.56869	.54217	.51718	.49363	.47143	.45050	.43074	.41208	.39446	.37781
54	.57882	.55265	.52796	.50465	.48265	.46186	.44222	.42364	.40607	.38945
55	.58902	.56322	.53884	.51579	.49400	.47338	.45387	.43540	.41789	.40131
56	.59926	.57383	.54978	.52701	.50544	.48501	.46565	.44729	.42987	.41335
57	.60951	.58449	.56078	.53830	.51698	.49675	.47755	.45932	.44201	.42555
58	.61978	.59517	.57182	.54964	.52858	.50858	.48956	.47147	.45427	.43790
59	.63007	.60589	.58290	.56105	.54027	.52050	.50167	.48375	.46668	.45041
60	.64039	.61665	.59405	.57254	.55205	.53253	.51392	.49617	.47925	.46310
61	.65072	.62743	.60524	.58409	.56390	.54465	.52627	.50872	.49196	.47595
62	.66104	.63822	.61645	.59566	.57581	.55683	.53870	.52136	.50478	.48892
63	.67133	.64900	.62766	.60726	.58774	.56907	.55120	.53409	.51770	.50200
64	.68161	.65977	.63887	.61887	.59970	.58134	.56375	.54688	.53071	.51519
65	.69186	.67053	.65009	.63049	.61170	.59367	.57637	.55976	.54381	.52849
66	.70216	.68136	.66140	.64223	.62383	.60615	.58916	.57283	.55713	.54203
67	.71250	.69224	.67277	.65405	.63605	.61874	.60208	.58605	.57062	.55575
68	.72283	.70312	.68416	.66590	.64833	.63140	.61509	.59938	.58423	.56963
69	.73312	.71398	.69553	.67776	.66062	.64409	.62815	.61277	.59793	.58360
70	.74335	.72479	.70688	.68959	.67291	.65680	.64124	.62621	.61168	.59764

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	2.2%	2.4%	2.6%	2.8%	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
71	.75353	.73556	.71819	.70141	.68519	.66951	.65434	.63968	.62549	.61176
72	.76364	.74626	.72945	.71318	.69744	.68220	.66745	.65317	.63933	.62593
73	.77365	.75686	.74061	.72487	.70962	.69484	.68051	.66662	.65315	.64009
74	.78350	.76733	.75164	.73643	.72167	.70735	.69346	.67997	.66688	.65417
75	.79318	.77761	.76249	.74781	.73355	.71971	.70625	.69318	.68048	.66813
76	.80266	.78769	.77314	.75899	.74524	.73187	.71886	.70621	.69390	.68192
77	.81194	.79756	.78358	.76997	.75672	.74382	.73127	.71904	.70713	.69553
78	.82100	.80722	.79380	.78072	.76798	.75556	.74346	.73166	.72016	.70894
79	.82984	.81664	.80378	.79124	.77900	.76706	.75542	.74405	.73296	.72213
80	.83843	.82582	.81351	.80149	.78976	.77830	.76711	.75618	.74550	.73507
81	.84678	.83474	.82298	.81148	.80025	.78927	.77853	.76803	.75777	.74773
82	.85487	.84339	.83217	.82119	.81045	.79994	.78966	.77959	.76974	.76009
83	.86269	.85177	.84107	.83060	.82035	.81030	.80047	.79083	.78139	.77214
84	.87024	.85986	.84968	.83970	.82993	.82035	.81095	.80174	.79271	.78385
85	.87751	.86765	.85798	.84849	.83919	.83005	.82110	.81230	.80368	.79521
86	.88450	.87515	.86597	.85696	.84811	.83942	.83089	.82251	.81428	.80619
87	.89119	.88234	.87363	.86508	.85668	.84843	.84031	.83234	.82450	.81679
88	.89760	.88922	.88099	.87289	.86492	.85708	.84938	.84180	.83434	.82700
89	.90372	.89580	.88801	.88034	.87280	.86537	.85806	.85087	.84378	.83681
90	.90954	.90207	.89471	.88746	.88032	.87329	.86637	.85954	.85282	.84620
91	.91508	.90803	.90109	.89424	.88750	.88085	.87429	.86783	.86146	.85518
92	.92033	.91369	.90714	.90068	.89432	.88803	.88184	.87572	.86969	.86374
93	.92530	.91904	.91287	.90678	.90078	.89484	.88899	.88321	.87751	.87188
94	.92999	.92411	.91830	.91256	.90690	.90130	.89578	.89032	.88493	.87961
95	.93442	.92889	.92342	.91802	.91269	.90741	.90220	.89706	.89197	.88694
96	.93858	.93338	.92824	.92316	.91813	.91316	.90825	.90340	.89859	.89385
97	.94248	.93759	.93276	.92798	.92325	.91857	.91395	.90937	.90484	.90036
98	.94614	.94155	.93701	.93252	.92807	.92367	.91931	.91500	.91073	.90650
99	.94959	.94528	.94101	.93679	.93260	.92846	.92436	.92030	.91628	.91229
100	.95278	.94874	.94473	.94075	.93682	.93292	.92906	.92523	.92144	.91769
101	.95581	.95201	.94824	.94451	.94081	.93715	.93352	.92992	.92635	.92281
102	.95860	.95503	.95149	.94798	.94450	.94105	.93763	.93424	.93088	.92754
103	.96136	.95802	.95470	.95142	.94816	.94492	.94171	.93853	.93538	.93224
104	.96390	.96077	.95766	.95458	.95152	.94848	.94547	.94248	.93951	.93657
105	.96640	.96347	.96057	.95769	.95483	.95199	.94917	.94637	.94359	.94083
106	.96950	.96684	.96420	.96157	.95896	.95636	.95379	.95123	.94868	.94616
107	.97301	.97064	.96829	.96595	.96362	.96131	.95901	.95672	.95445	.95219
108	.97859	.97670	.97482	.97295	.97109	.96923	.96739	.96555	.96373	.96191
109	.98924	.98828	.98733	.98638	.98544	.98450	.98356	.98263	.98170	.98077

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
0	.06083	.05483	.04959	.04501	.04101	.03749	.03441	.03170	.02931	.02721
1	.05668	.05049	.04507	.04034	.03618	.03254	.02934	.02652	.02403	.02183
2	.05858	.05222	.04665	.04178	.03750	.03373	.03042	.02750	.02492	.02264
3	.06072	.05420	.04848	.04346	.03904	.03516	.03173	.02871	.02603	.02366
4	.06303	.05634	.05046	.04530	.04075	.03674	.03319	.03006	.02729	.02483
5	.06547	.05861	.05258	.04726	.04258	.03844	.03478	.03153	.02866	.02610
6	.06805	.06102	.05482	.04935	.04453	.04026	.03647	.03312	.03014	.02749
7	.07074	.06353	.05717	.05155	.04658	.04217	.03826	.03479	.03171	.02895
8	.07356	.06617	.05964	.05386	.04875	.04421	.04017	.03658	.03338	.03053
9	.07651	.06895	.06225	.05631	.05105	.04637	.04220	.03849	.03518	.03222
10	.07960	.07185	.06499	.05889	.05347	.04865	.04435	.04052	.03709	.03402
11	.08283	.07490	.06786	.06160	.05603	.05106	.04663	.04267	.03912	.03594
12	.08620	.07808	.07087	.06444	.05871	.05360	.04903	.04494	.04127	.03798
13	.08967	.08137	.07397	.06738	.06149	.05623	.05152	.04729	.04351	.04010
14	.09321	.08472	.07715	.07038	.06433	.05892	.05406	.04971	.04579	.04227
15	.09680	.08812	.08036	.07342	.06721	.06164	.05664	.05214	.04810	.04445
16	.10041	.09154	.08360	.07649	.07011	.06438	.05923	.05459	.05041	.04664
17	.10409	.09502	.08689	.07960	.07305	.06716	.06185	.05707	.05276	.04886
18	.10782	.09855	.09024	.08276	.07604	.06998	.06452	.05959	.05514	.05111
19	.11164	.10217	.09366	.08600	.07910	.07288	.06726	.06218	.05758	.05341
20	.11559	.10592	.09721	.08937	.08228	.07589	.07010	.06487	.06012	.05582
21	.11965	.10977	.10087	.09283	.08557	.07900	.07305	.06765	.06276	.05831
22	.12383	.11376	.10465	.09642	.08897	.08223	.07610	.07055	.06550	.06090
23	.12817	.11789	.10859	.10016	.09252	.08559	.07930	.07358	.06837	.06363
24	.13270	.12221	.11270	.10408	.09625	.08914	.08267	.07678	.07141	.06651
25	.13744	.12674	.11703	.10821	.10019	.09289	.08625	.08018	.07465	.06960
26	.14239	.13149	.12158	.11256	.10435	.09686	.09003	.08380	.07810	.07288
27	.14758	.13647	.12636	.11714	.10873	.10106	.09405	.08764	.08177	.07639
28	.15300	.14169	.13137	.12195	.11335	.10549	.09829	.09171	.08567	.08012
29	.15864	.14712	.13660	.12698	.11819	.11013	.10275	.09598	.08977	.08406
30	.16448	.15275	.14203	.13222	.12323	.11498	.10742	.10047	.09408	.08820
31	.17053	.15861	.14769	.13768	.12849	.12006	.11230	.10517	.09860	.09255
32	.17680	.16468	.15357	.14336	.13398	.12535	.11741	.11009	.10335	.09712
33	.18330	.17099	.15968	.14927	.13970	.13088	.12275	.11525	.10832	.10192
34	.19000	.17750	.16599	.15539	.14562	.13661	.12829	.12061	.11350	.10693

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
35	.19692	.18423	.17253	.16174	.15178	.14258	.13408	.12621	.11892	.11217
36	.20407	.19119	.17931	.16833	.15818	.14879	.14009	.13204	.12457	.11764
37	.21144	.19838	.18631	.17515	.16481	.15523	.14635	.13811	.13046	.12335
38	.21904	.20582	.19357	.18222	.17170	.16193	.15287	.14444	.13661	.12932
39	.22687	.21348	.20105	.18952	.17882	.16887	.15962	.15102	.14300	.13554
40	.23493	.22137	.20878	.19707	.18619	.17606	.16663	.15784	.14965	.14201
41	.24322	.22950	.21674	.20487	.19381	.18350	.17390	.16493	.15656	.14873
42	.25173	.23786	.22494	.21290	.20168	.19120	.18141	.17227	.16372	.15572
43	.26049	.24648	.23342	.22122	.20982	.19918	.18922	.17990	.17118	.16301
44	.26950	.25535	.24214	.22979	.21824	.20742	.19730	.18781	.17892	.17057
45	.27874	.26447	.25112	.23862	.22692	.21595	.20566	.19600	.18694	.17843
46	.28824	.27385	.26038	.24774	.23589	.22476	.21431	.20450	.19527	.18659
47	.29798	.28349	.26989	.25712	.24513	.23386	.22326	.21328	.20390	.19505
48	.30797	.29338	.27967	.26678	.25466	.24325	.23250	.22238	.21283	.20383
49	.31822	.30355	.28974	.27674	.26449	.25294	.24206	.23179	.22210	.21294
50	.32876	.31401	.30011	.28701	.27465	.26298	.25196	.24156	.23172	.22242
51	.33958	.32477	.31079	.29759	.28513	.27335	.26221	.25168	.24170	.23226
52	.35068	.33582	.32178	.30851	.29595	.28407	.27282	.26216	.25206	.24249
53	.36206	.34717	.33308	.31974	.30710	.29513	.28378	.27301	.26279	.25309
54	.37371	.35880	.34467	.33127	.31857	.30651	.29507	.28420	.27388	.26406
55	.38559	.37067	.35652	.34308	.33032	.31820	.30668	.29572	.28529	.27537
56	.39765	.38275	.36859	.35512	.34232	.33014	.31855	.30751	.29699	.28697
57	.40990	.39502	.38086	.36739	.35455	.34233	.33068	.31957	.30898	.29887
58	.42231	.40747	.39333	.37985	.36700	.35474	.34304	.33188	.32121	.31103
59	.43490	.42011	.40600	.39253	.37968	.36740	.35567	.34446	.33374	.32348
60	.44768	.43296	.41890	.40546	.39261	.38033	.36858	.35733	.34656	.33625
61	.46064	.44600	.43200	.41860	.40578	.39351	.38175	.37048	.35968	.34933
62	.47373	.45920	.44527	.43194	.41915	.40690	.39514	.38387	.37305	.36267
63	.48696	.47253	.45870	.44544	.43271	.42049	.40876	.39749	.38666	.37625
64	.50030	.48601	.47229	.45911	.44645	.43428	.42258	.41133	.40051	.39010
65	.51377	.49963	.48603	.47295	.46037	.44827	.43662	.42540	.41460	.40420
66	.52750	.51352	.50007	.48711	.47464	.46262	.45103	.43987	.42911	.41872
67	.54144	.52765	.51436	.50154	.48919	.47727	.46578	.45468	.44397	.43363
68	.55554	.54196	.52885	.51619	.50398	.49218	.48079	.46978	.45915	.44887
69	.56976	.55640	.54349	.53102	.51896	.50731	.49603	.48513	.47458	.46438
70	.58407	.57095	.55826	.54598	.53410	.52260	.51147	.50069	.49025	.48013

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
71	.59848	.58561	.57316	.56109	.54940	.53808	.52710	.51646	.50615	.49614
72	.61294	.60035	.58815	.57632	.56484	.55371	.54291	.53243	.52225	.51237
73	.62741	.61512	.60318	.59160	.58035	.56943	.55882	.54851	.53849	.52876
74	.64183	.62983	.61818	.60686	.59586	.58516	.57476	.56464	.55480	.54523
75	.65612	.64444	.63309	.62204	.61129	.60083	.59065	.58074	.57109	.56169
76	.67026	.65891	.64786	.63710	.62661	.61640	.60646	.59676	.58731	.57810
77	.68423	.67321	.66248	.65201	.64181	.63186	.62215	.61269	.60345	.59444
78	.69800	.68733	.67692	.66676	.65684	.64717	.63772	.62849	.61948	.61068
79	.71156	.70124	.69116	.68132	.67170	.66230	.65312	.64414	.63537	.62680
80	.72487	.71490	.70516	.69563	.68632	.67721	.66830	.65959	.65106	.64272
81	.73791	.72830	.71890	.70970	.70069	.69188	.68325	.67481	.66654	.65844
82	.75065	.74140	.73235	.72348	.71479	.70628	.69794	.68977	.68176	.67391
83	.76308	.75419	.74548	.73695	.72858	.72037	.71232	.70443	.69669	.68909
84	.77516	.76664	.75828	.75008	.74203	.73413	.72638	.71877	.71130	.70396
85	.78689	.77873	.77072	.76285	.75512	.74753	.74008	.73275	.72556	.71849
86	.79825	.79044	.78278	.77524	.76783	.76055	.75340	.74636	.73944	.73264
87	.80921	.80176	.79443	.78722	.78014	.77316	.76630	.75956	.75292	.74638
88	.81978	.81268	.80569	.79880	.79203	.78536	.77880	.77234	.76598	.75971
89	.82994	.82317	.81651	.80995	.80349	.79712	.79085	.78467	.77859	.77259
90	.83967	.83324	.82690	.82065	.81450	.80843	.80244	.79655	.79073	.78500
91	.84898	.84288	.83685	.83091	.82505	.81928	.81358	.80795	.80241	.79693
92	.85787	.85208	.84636	.84072	.83515	.82966	.82423	.81888	.81360	.80838
93	.86632	.86083	.85541	.85006	.84477	.83955	.83440	.82931	.82428	.81931
94	.87435	.86915	.86402	.85894	.85393	.84898	.84409	.83925	.83447	.82975
95	.88197	.87705	.87219	.86739	.86265	.85795	.85331	.84872	.84419	.83970
96	.88915	.88451	.87991	.87537	.87088	.86643	.86203	.85768	.85338	.84912
97	.89593	.89154	.88720	.88290	.87865	.87444	.87028	.86616	.86208	.85804
98	.90232	.89818	.89408	.89002	.88600	.88202	.87808	.87418	.87031	.86649
99	.90835	.90444	.90057	.89674	.89294	.88918	.88546	.88177	.87811	.87449
100	.91397	.91028	.90663	.90301	.89942	.89587	.89234	.88885	.88539	.88196
101	.91930	.91583	.91238	.90897	.90558	.90223	.89890	.89560	.89233	.88908
102	.92424	.92096	.91771	.91448	.91128	.90811	.90496	.90184	.89875	.89568
103	.92914	.92605	.92300	.91996	.91695	.91397	.91100	.90806	.90514	.90225
104	.93364	.93074	.92786	.92501	.92217	.91935	.91656	.91379	.91103	.90830
105	.93809	.93537	.93266	.92998	.92731	.92467	.92204	.91943	.91683	.91426
106	.94365	.94115	.93867	.93621	.93376	.93133	.92892	.92651	.92413	.92176
107	.94994	.94771	.94549	.94328	.94108	.93890	.93673	.93457	.93242	.93028
108	.96010	.95830	.95651	.95472	.95295	.95118	.94942	.94767	.94593	.94420
109	.97985	.97893	.97801	.97710	.97619	.97529	.97438	.97348	.97259	.97170

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
0	.02534	.02370	.02223	.02093	.01978	.01874	.01782	.01699	.01625	.01559
1	.01989	.01817	.01664	.01528	.01406	.01298	.01202	.01115	.01037	.00967
2	.02061	.01882	.01722	.01580	.01454	.01340	.01239	.01148	.01066	.00993
3	.02156	.01969	.01802	.01654	.01521	.01403	.01297	.01201	.01115	.01038
4	.02264	.02069	.01896	.01741	.01602	.01478	.01367	.01267	.01176	.01095
5	.02383	.02180	.01999	.01838	.01693	.01563	.01446	.01341	.01246	.01161
6	.02512	.02301	.02113	.01944	.01793	.01657	.01535	.01424	.01325	.01235
7	.02650	.02430	.02234	.02058	.01900	.01758	.01630	.01514	.01410	.01315
8	.02798	.02570	.02365	.02182	.02017	.01868	.01734	.01613	.01503	.01404
9	.02957	.02720	.02507	.02316	.02143	.01988	.01848	.01721	.01606	.01502
10	.03128	.02881	.02659	.02460	.02280	.02118	.01971	.01838	.01718	.01608
11	.03309	.03053	.02823	.02615	.02428	.02258	.02105	.01966	.01839	.01725
12	.03503	.03237	.02997	.02781	.02585	.02408	.02248	.02103	.01971	.01850
13	.03704	.03428	.03179	.02954	.02750	.02565	.02398	.02246	.02108	.01982
14	.03909	.03623	.03364	.03130	.02918	.02726	.02551	.02392	.02248	.02116
15	.04117	.03820	.03551	.03308	.03087	.02886	.02704	.02538	.02387	.02249
16	.04324	.04016	.03737	.03484	.03254	.03046	.02855	.02682	.02524	.02379
17	.04533	.04214	.03924	.03661	.03422	.03205	.03007	.02826	.02661	.02509
18	.04746	.04415	.04114	.03841	.03592	.03366	.03159	.02970	.02798	.02639
19	.04963	.04620	.04309	.04025	.03766	.03530	.03315	.03117	.02937	.02772
20	.05191	.04835	.04512	.04217	.03948	.03702	.03478	.03272	.03083	.02910
21	.05427	.05058	.04723	.04416	.04137	.03881	.03647	.03432	.03235	.03054
22	.05672	.05291	.04943	.04625	.04334	.04067	.03823	.03599	.03394	.03205
23	.05930	.05535	.05174	.04844	.04542	.04265	.04010	.03777	.03562	.03364
24	.06204	.05795	.05421	.05078	.04764	.04476	.04211	.03967	.03743	.03536
25	.06497	.06074	.05687	.05331	.05005	.04705	.04429	.04174	.03940	.03724
26	.06811	.06373	.05972	.05603	.05264	.04952	.04665	.04400	.04155	.03929
27	.07146	.06694	.06278	.05895	.05543	.05219	.04920	.04644	.04389	.04153
28	.07503	.07036	.06605	.06209	.05844	.05507	.05196	.04908	.04642	.04396
29	.07881	.07398	.06953	.06542	.06163	.05814	.05490	.05191	.04913	.04656
30	.08279	.07780	.07319	.06894	.06502	.06138	.05802	.05491	.05202	.04933
31	.08697	.08182	.07707	.07267	.06860	.06483	.06134	.05810	.05509	.05229
32	.09137	.08606	.08115	.07660	.07239	.06848	.06485	.06148	.05835	.05543
33	.09601	.09053	.08546	.08075	.07639	.07234	.06858	.06508	.06182	.05878
34	.10084	.09520	.08996	.08511	.08059	.07640	.07249	.06886	.06547	.06231

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
35	.10590	.10009	.09470	.08968	.08501	.08067	.07662	.07285	.06933	.06605
36	.11120	.10522	.09966	.09448	.08966	.08517	.08098	.07706	.07341	.06999
37	.11674	.11059	.10486	.09952	.09454	.08990	.08556	.08150	.07771	.07416
38	.12254	.11621	.11032	.10481	.09968	.09487	.09039	.08618	.08225	.07856
39	.12857	.12208	.11601	.11035	.10505	.10009	.09545	.09110	.08702	.08320
40	.13487	.12820	.12196	.11613	.11067	.10555	.10076	.09626	.09204	.08807
41	.14142	.13458	.12817	.12217	.11655	.11127	.10632	.10167	.09730	.09319
42	.14823	.14122	.13464	.12848	.12269	.11725	.11214	.10734	.10282	.09856
43	.15535	.14816	.14141	.13508	.12913	.12353	.11826	.11330	.10863	.10422
44	.16274	.15538	.14847	.14196	.13585	.13008	.12466	.11954	.11472	.11016
45	.17042	.16290	.15581	.14914	.14286	.13694	.13135	.12608	.12110	.11640
46	.17842	.17073	.16348	.15664	.15020	.14411	.13836	.13293	.12780	.12294
47	.18672	.17886	.17145	.16445	.15784	.15159	.14568	.14010	.13481	.12980
48	.19534	.18732	.17974	.17258	.16581	.15940	.15334	.14759	.14215	.13699
49	.20429	.19612	.18838	.18106	.17413	.16757	.16134	.15544	.14984	.14453
50	.21362	.20529	.19740	.18993	.18284	.17612	.16974	.16368	.15793	.15247
51	.22332	.21484	.20680	.19917	.19194	.18506	.17853	.17232	.16642	.16080
52	.23341	.22479	.21660	.20883	.20144	.19442	.18774	.18138	.17533	.16957
53	.24388	.23513	.22681	.21889	.21136	.20419	.19737	.19087	.18467	.17876
54	.25473	.24585	.23739	.22935	.22168	.21437	.20741	.20076	.19442	.18837
55	.26593	.25693	.24835	.24017	.23238	.22494	.21784	.21105	.20458	.19838
56	.27742	.26831	.25962	.25132	.24340	.23583	.22860	.22169	.21508	.20875
57	.28922	.28001	.27121	.26280	.25476	.24707	.23971	.23267	.22593	.21947
58	.30129	.29199	.28309	.27457	.26642	.25862	.25114	.24398	.23712	.23053
59	.31367	.30428	.29529	.28667	.27842	.27051	.26293	.25565	.24867	.24197
60	.32638	.31691	.30784	.29914	.29079	.28278	.27509	.26771	.26062	.25380
61	.33940	.32987	.32073	.31195	.30352	.29542	.28763	.28015	.27295	.26603
62	.35269	.34311	.33391	.32506	.31656	.30837	.30050	.29293	.28564	.27862
63	.36625	.35663	.34738	.33847	.32990	.32165	.31370	.30604	.29867	.29155
64	.38007	.37043	.36113	.35218	.34356	.33524	.32723	.31950	.31204	.30484
65	.39417	.38451	.37519	.36620	.35753	.34917	.34110	.33330	.32577	.31850
66	.40871	.39905	.38972	.38071	.37201	.36361	.35550	.34765	.34006	.33273
67	.42365	.41400	.40468	.39567	.38696	.37853	.37038	.36250	.35487	.34749
68	.43892	.42931	.42001	.41101	.40230	.39387	.38570	.37780	.37014	.36272
69	.45450	.44493	.43567	.42670	.41800	.40958	.40141	.39350	.38582	.37837
70	.47033	.46083	.45162	.44269	.43403	.42563	.41748	.40957	.40189	.39443

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
71	.48644	.47702	.46788	.45901	.45040	.44203	.43391	.42602	.41835	.41090
72	.50278	.49347	.48441	.47562	.46707	.45877	.45069	.44284	.43520	.42776
73	.51930	.51010	.50115	.49245	.48399	.47575	.46774	.45994	.45234	.44494
74	.53591	.52684	.51802	.50943	.50106	.49291	.48497	.47724	.46970	.46235
75	.55253	.54361	.53492	.52645	.51820	.51015	.50230	.49465	.48719	.47991
76	.56912	.56036	.55182	.54349	.53536	.52742	.51968	.51213	.50475	.49754
77	.58565	.57706	.56868	.56050	.55251	.54471	.53708	.52964	.52236	.51525
78	.60209	.59369	.58549	.57747	.56963	.56197	.55448	.54715	.53999	.53298
79	.61841	.61021	.60219	.59435	.58668	.57917	.57182	.56463	.55760	.55071
80	.63456	.62657	.61875	.61109	.60359	.59625	.58906	.58202	.57512	.56836
81	.65050	.64273	.63512	.62766	.62034	.61318	.60616	.59927	.59252	.58590
82	.66621	.65867	.65127	.64401	.63690	.62992	.62308	.61636	.60977	.60330
83	.68164	.67433	.66716	.66012	.65321	.64642	.63976	.63322	.62680	.62050
84	.69676	.68969	.68275	.67593	.66923	.66265	.65618	.64983	.64358	.63745
85	.71154	.70472	.69801	.69141	.68493	.67856	.67229	.66613	.66007	.65412
86	.72595	.71937	.71290	.70654	.70028	.69412	.68806	.68210	.67623	.67046
87	.73995	.73362	.72740	.72127	.71523	.70929	.70344	.69768	.69201	.68642
88	.75354	.74746	.74148	.73558	.72978	.72406	.71842	.71287	.70739	.70200
89	.76668	.76085	.75511	.74945	.74387	.73837	.73295	.72761	.72234	.71714
90	.77934	.77377	.76827	.76284	.75749	.75222	.74701	.74188	.73681	.73181
91	.79153	.78620	.78094	.77575	.77063	.76558	.76059	.75566	.75080	.74600
92	.80323	.79814	.79312	.78816	.78326	.77843	.77365	.76894	.76428	.75967
93	.81440	.80956	.80477	.80004	.79536	.79074	.78618	.78166	.77721	.77280
94	.82508	.82047	.81591	.81140	.80694	.80253	.79817	.79387	.78961	.78539
95	.83526	.83088	.82654	.82225	.81800	.81380	.80965	.80554	.80148	.79746
96	.84491	.84074	.83662	.83254	.82850	.82450	.82055	.81663	.81276	.80892
97	.85405	.85009	.84617	.84230	.83846	.83466	.83089	.82717	.82348	.81982
98	.86270	.85895	.85523	.85155	.84791	.84430	.84072	.83718	.83367	.83019
99	.87090	.86735	.86382	.86033	.85687	.85345	.85005	.84668	.84335	.84004
100	.87856	.87519	.87185	.86854	.86526	.86201	.85878	.85559	.85242	.84927
101	.88587	.88268	.87952	.87638	.87327	.87019	.86713	.86409	.86109	.85810
102	.89263	.88961	.88662	.88364	.88069	.87777	.87487	.87199	.86913	.86629
103	.89938	.89653	.89370	.89089	.88810	.88534	.88259	.87987	.87717	.87448
104	.90558	.90289	.90021	.89756	.89492	.89231	.88971	.88713	.88456	.88202
105	.91170	.90916	.90664	.90413	.90164	.89917	.89672	.89428	.89186	.88945
106	.91940	.91706	.91474	.91242	.91013	.90784	.90558	.90332	.90108	.89885
107	.92816	.92605	.92395	.92186	.91978	.91772	.91567	.91362	.91159	.90957
108	.94247	.94075	.93904	.93734	.93565	.93396	.93229	.93062	.92895	.92730
109	.97081	.96992	.96904	.96816	.96729	.96642	.96555	.96468	.96382	.96296

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
0	.01498	.01444	.01395	.01351	.01310	.01273	.01240	.01209	.01181	.01155
1	.00904	.00847	.00796	.00749	.00707	.00668	.00633	.00601	.00572	.00545
2	.00926	.00866	.00812	.00763	.00718	.00677	.00640	.00606	.00575	.00547
3	.00968	.00905	.00848	.00796	.00748	.00705	.00666	.00630	.00597	.00567
4	.01021	.00955	.00894	.00839	.00789	.00744	.00702	.00664	.00629	.00597
5	.01083	.01013	.00949	.00891	.00839	.00790	.00746	.00706	.00669	.00635
6	.01153	.01080	.01012	.00951	.00895	.00844	.00798	.00755	.00715	.00679
7	.01229	.01151	.01081	.01016	.00957	.00903	.00854	.00808	.00767	.00728
8	.01314	.01232	.01157	.01089	.01026	.00969	.00917	.00869	.00825	.00784
9	.01407	.01321	.01242	.01170	.01104	.01044	.00989	.00938	.00891	.00848
10	.01509	.01418	.01335	.01259	.01190	.01126	.01068	.01014	.00965	.00919
11	.01620	.01525	.01437	.01358	.01285	.01218	.01156	.01099	.01047	.00998
12	.01740	.01640	.01549	.01465	.01388	.01317	.01252	.01192	.01137	.01086
13	.01867	.01762	.01665	.01577	.01496	.01422	.01353	.01290	.01231	.01177
14	.01995	.01885	.01784	.01691	.01606	.01527	.01455	.01389	.01327	.01270
15	.02123	.02007	.01901	.01803	.01714	.01632	.01556	.01485	.01420	.01360
16	.02247	.02126	.02015	.01913	.01818	.01732	.01652	.01578	.01509	.01446
17	.02371	.02244	.02127	.02020	.01921	.01830	.01746	.01668	.01596	.01529
18	.02494	.02361	.02239	.02126	.02022	.01926	.01838	.01756	.01680	.01610
19	.02620	.02480	.02352	.02234	.02125	.02024	.01931	.01844	.01764	.01690
20	.02751	.02605	.02471	.02346	.02232	.02126	.02028	.01937	.01853	.01775
21	.02888	.02735	.02593	.02463	.02343	.02231	.02128	.02032	.01944	.01861
22	.03030	.02870	.02722	.02585	.02458	.02341	.02233	.02132	.02038	.01951
23	.03181	.03013	.02858	.02714	.02581	.02458	.02344	.02237	.02139	.02047
24	.03345	.03169	.03006	.02855	.02715	.02586	.02465	.02353	.02249	.02152
25	.03524	.03340	.03169	.03010	.02863	.02727	.02600	.02482	.02373	.02270
26	.03720	.03527	.03348	.03181	.03027	.02884	.02750	.02626	.02510	.02402
27	.03934	.03732	.03544	.03370	.03208	.03057	.02916	.02786	.02664	.02549
28	.04167	.03955	.03759	.03576	.03406	.03247	.03099	.02962	.02833	.02713
29	.04417	.04196	.03990	.03798	.03619	.03453	.03298	.03153	.03017	.02890
30	.04684	.04452	.04237	.04036	.03848	.03674	.03510	.03358	.03215	.03081
31	.04969	.04727	.04501	.04291	.04094	.03911	.03739	.03579	.03428	.03287
32	.05272	.05019	.04783	.04563	.04357	.04165	.03984	.03816	.03657	.03509
33	.05595	.05331	.05085	.04854	.04639	.04437	.04248	.04070	.03904	.03748
34	.05936	.05661	.05403	.05162	.04936	.04725	.04527	.04341	.04166	.04001

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
35	.06297	.06010	.05741	.05489	.05253	.05032	.04824	.04629	.04445	.04272
36	.06679	.06380	.06100	.05837	.05590	.05358	.05140	.04935	.04742	.04561
37	.07083	.06771	.06479	.06204	.05947	.05704	.05476	.05261	.05059	.04868
38	.07511	.07186	.06881	.06595	.06326	.06072	.05834	.05609	.05397	.05196
39	.07961	.07623	.07306	.07007	.06726	.06462	.06212	.05977	.05754	.05544
40	.08434	.08083	.07753	.07442	.07149	.06873	.06612	.06366	.06133	.05913
41	.08932	.08568	.08225	.07901	.07596	.07308	.07035	.06778	.06534	.06304
42	.09455	.09077	.08720	.08384	.08066	.07766	.07481	.07213	.06958	.06717
43	.10007	.09615	.09245	.08895	.08564	.08251	.07955	.07674	.07408	.07156
44	.10586	.10180	.09796	.09433	.09089	.08763	.08454	.08162	.07884	.07621
45	.11195	.10774	.10376	.09999	.09642	.09303	.08982	.08677	.08387	.08112
46	.11835	.11400	.10987	.10596	.10225	.09873	.09539	.09222	.08920	.08633
47	.12505	.12055	.11629	.11224	.10839	.10474	.10126	.09796	.09482	.09182
48	.13209	.12745	.12303	.11884	.11485	.11106	.10746	.10402	.10075	.09764
49	.13948	.13469	.13013	.12579	.12167	.11774	.11400	.11043	.10703	.10379
50	.14727	.14233	.13762	.13314	.12887	.12481	.12093	.11723	.11370	.11033
51	.15546	.15037	.14551	.14089	.13648	.13228	.12826	.12443	.12077	.11726
52	.16407	.15884	.15384	.14907	.14452	.14018	.13603	.13206	.12826	.12463
53	.17312	.16774	.16260	.15769	.15300	.14852	.14423	.14012	.13620	.13243
54	.18259	.17707	.17179	.16674	.16191	.15729	.15286	.14862	.14456	.14067
55	.19247	.18680	.18139	.17620	.17123	.16648	.16192	.15755	.15335	.14933
56	.20270	.19690	.19135	.18602	.18092	.17603	.17134	.16684	.16251	.15836
57	.21329	.20736	.20167	.19622	.19099	.18596	.18114	.17650	.17205	.16777
58	.22422	.21816	.21235	.20677	.20140	.19625	.19130	.18653	.18195	.17754
59	.23553	.22935	.22341	.21770	.21221	.20693	.20185	.19696	.19225	.18772
60	.24725	.24095	.23489	.22906	.22345	.21805	.21285	.20783	.20300	.19834
61	.25937	.25296	.24679	.24084	.23511	.22959	.22427	.21914	.21419	.20941
62	.27185	.26534	.25906	.25300	.24716	.24153	.23609	.23084	.22577	.22088
63	.28469	.27808	.27169	.26553	.25959	.25384	.24830	.24294	.23776	.23275
64	.29789	.29119	.28471	.27845	.27240	.26656	.26091	.25544	.25016	.24504
65	.31148	.30468	.29812	.29177	.28563	.27969	.27394	.26837	.26299	.25777
66	.32564	.31877	.31213	.30570	.29948	.29345	.28761	.28195	.27647	.27115
67	.34034	.33341	.32671	.32021	.31391	.30780	.30188	.29614	.29057	.28517
68	.35552	.34855	.34179	.33523	.32887	.32270	.31671	.31089	.30524	.29976
69	.37115	.36414	.35734	.35073	.34432	.33809	.33204	.32616	.32045	.31489
70	.38719	.38016	.37332	.36668	.36023	.35396	.34786	.34193	.33616	.33054

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
71	.40366	.39662	.38977	.38311	.37663	.37032	.36419	.35821	.35240	.34674
72	.42053	.41350	.40665	.39998	.39349	.38716	.38100	.37500	.36916	.36346
73	.43774	.43073	.42389	.41723	.41074	.40441	.39824	.39222	.38636	.38063
74	.45519	.44821	.44140	.43476	.42829	.42197	.41580	.40979	.40391	.39818
75	.47280	.46587	.45910	.45250	.44605	.43975	.43360	.42759	.42173	.41599
76	.49051	.48364	.47693	.47037	.46396	.45770	.45158	.44560	.43975	.43403
77	.50830	.50150	.49486	.48836	.48201	.47580	.46972	.46377	.45795	.45225
78	.52613	.51942	.51286	.50644	.50015	.49400	.48797	.48208	.47630	.47064
79	.54396	.53736	.53089	.52456	.51835	.51227	.50632	.50048	.49476	.48915
80	.56174	.55525	.54888	.54265	.53653	.53054	.52466	.51890	.51325	.50770
81	.57941	.57305	.56681	.56068	.55467	.54878	.54299	.53731	.53174	.52627
82	.59696	.59073	.58461	.57861	.57272	.56693	.56125	.55566	.55018	.54480
83	.61430	.60822	.60224	.59637	.59061	.58494	.57937	.57389	.56851	.56322
84	.63142	.62549	.61966	.61393	.60830	.60276	.59731	.59196	.58669	.58150
85	.64825	.64249	.63682	.63124	.62575	.62035	.61503	.60980	.60465	.59958
86	.66477	.65918	.65367	.64825	.64291	.63765	.63248	.62738	.62236	.61741
87	.68092	.67550	.67016	.66490	.65972	.65462	.64959	.64463	.63975	.63493
88	.69669	.69145	.68628	.68119	.67618	.67123	.66635	.66154	.65680	.65212
89	.71201	.70696	.70198	.69706	.69221	.68742	.68270	.67805	.67345	.66892
90	.72688	.72201	.71721	.71246	.70779	.70317	.69861	.69411	.68966	.68528
91	.74126	.73658	.73196	.72739	.72289	.71844	.71404	.70970	.70541	.70117
92	.75513	.75063	.74620	.74181	.73748	.73320	.72897	.72479	.72066	.71657
93	.76844	.76414	.75988	.75568	.75152	.74741	.74334	.73932	.73535	.73142
94	.78123	.77711	.77303	.76901	.76502	.76108	.75718	.75332	.74951	.74573
95	.79348	.78954	.78565	.78179	.77798	.77421	.77047	.76677	.76312	.75950
96	.80513	.80137	.79765	.79397	.79032	.78671	.78314	.77960	.77610	.77263
97	.81621	.81262	.80908	.80556	.80208	.79864	.79522	.79184	.78849	.78517
98	.82674	.82333	.81995	.81660	.81328	.80999	.80673	.80351	.80031	.79713
99	.83677	.83352	.83030	.82711	.82395	.82082	.81771	.81463	.81158	.80855
100	.84616	.84307	.84001	.83697	.83396	.83097	.82801	.82507	.82216	.81927
101	.85514	.85221	.84930	.84641	.84355	.84070	.83788	.83509	.83231	.82956
102	.86348	.86069	.85792	.85517	.85245	.84974	.84706	.84439	.84175	.83912
103	.87182	.86918	.86655	.86395	.86136	.85880	.85625	.85372	.85121	.84872
104	.87950	.87699	.87450	.87203	.86957	.86713	.86471	.86231	.85992	.85755
105	.88706	.88468	.88232	.87998	.87765	.87534	.87304	.87076	.86849	.86624
106	.89664	.89444	.89225	.89008	.88792	.88577	.88364	.88152	.87941	.87731
107	.90756	.90557	.90358	.90160	.89964	.89768	.89574	.89380	.89188	.88997
108	.92565	.92401	.92238	.92075	.91914	.91753	.91592	.91433	.91274	.91116
109	.96211	.96125	.96041	.95956	.95872	.95788	.95704	.95620	.95537	.95455

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
0	.01132	.01110	.01089	.01071	.01053	.01037	.01022	.01008	.00995	.00983
1	.00520	.00497	.00476	.00457	.00439	.00423	.00407	.00393	.00379	.00367
2	.00521	.00496	.00474	.00454	.00435	.00417	.00401	.00385	.00371	.00358
3	.00539	.00513	.00490	.00468	.00447	.00429	.00411	.00395	.00380	.00366
4	.00567	.00540	.00515	.00492	.00470	.00450	.00432	.00414	.00398	.00383
5	.00603	.00574	.00547	.00523	.00500	.00478	.00459	.00440	.00423	.00407
6	.00646	.00615	.00587	.00560	.00536	.00513	.00492	.00472	.00453	.00436
7	.00693	.00660	.00630	.00602	.00576	.00551	.00529	.00508	.00488	.00469
8	.00747	.00712	.00680	.00650	.00622	.00596	.00572	.00549	.00528	.00509
9	.00808	.00771	.00737	.00705	.00675	.00648	.00622	.00598	.00576	.00555
10	.00877	.00838	.00801	.00767	.00736	.00707	.00679	.00654	.00630	.00608
11	.00954	.00912	.00873	.00838	.00804	.00773	.00744	.00717	.00692	.00668
12	.01038	.00994	.00953	.00915	.00880	.00847	.00816	.00788	.00761	.00735
13	.01127	.01081	.01038	.00998	.00960	.00925	.00893	.00862	.00833	.00806
14	.01217	.01168	.01122	.01080	.01040	.01003	.00969	.00937	.00906	.00878
15	.01305	.01253	.01205	.01160	.01118	.01079	.01042	.01008	.00976	.00946
16	.01387	.01333	.01282	.01234	.01190	.01149	.01110	.01074	.01040	.01009
17	.01467	.01409	.01356	.01306	.01259	.01216	.01175	.01137	.01101	.01067
18	.01544	.01484	.01427	.01374	.01325	.01279	.01236	.01195	.01157	.01122
19	.01621	.01557	.01497	.01442	.01390	.01341	.01295	.01253	.01213	.01175
20	.01702	.01634	.01571	.01512	.01457	.01406	.01357	.01312	.01270	.01230
21	.01784	.01713	.01646	.01584	.01526	.01471	.01420	.01372	.01327	.01285
22	.01870	.01794	.01724	.01658	.01596	.01539	.01485	.01434	.01386	.01342
23	.01961	.01881	.01807	.01737	.01672	.01611	.01554	.01500	.01449	.01402
24	.02062	.01977	.01899	.01825	.01756	.01691	.01630	.01573	.01520	.01469
25	.02175	.02085	.02002	.01924	.01851	.01782	.01718	.01657	.01600	.01547
26	.02301	.02207	.02119	.02036	.01958	.01886	.01817	.01753	.01692	.01635
27	.02443	.02343	.02250	.02162	.02080	.02003	.01930	.01862	.01798	.01737
28	.02600	.02495	.02396	.02303	.02216	.02134	.02057	.01985	.01916	.01852
29	.02771	.02660	.02555	.02457	.02365	.02278	.02197	.02120	.02047	.01979
30	.02956	.02838	.02728	.02624	.02526	.02434	.02348	.02266	.02189	.02116
31	.03155	.03031	.02914	.02804	.02701	.02604	.02512	.02425	.02344	.02266
32	.03370	.03239	.03115	.02999	.02890	.02787	.02690	.02598	.02511	.02429
33	.03601	.03463	.03333	.03210	.03095	.02985	.02883	.02785	.02693	.02606
34	.03847	.03701	.03564	.03434	.03312	.03197	.03088	.02985	.02887	.02795

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
35	.04109	.03956	.03811	.03675	.03546	.03424	.03308	.03199	.03096	.02998
36	.04390	.04228	.04076	.03932	.03795	.03667	.03545	.03429	.03320	.03216
37	.04688	.04518	.04358	.04206	.04062	.03926	.03798	.03676	.03560	.03450
38	.05007	.04829	.04660	.04500	.04349	.04205	.04069	.03940	.03818	.03701
39	.05346	.05158	.04981	.04812	.04653	.04502	.04358	.04222	.04092	.03969
40	.05705	.05508	.05321	.05144	.04976	.04817	.04666	.04522	.04385	.04255
41	.06086	.05879	.05683	.05497	.05320	.05152	.04993	.04841	.04697	.04559
42	.06488	.06271	.06066	.05870	.05684	.05508	.05340	.05180	.05028	.04882
43	.06917	.06690	.06474	.06269	.06074	.05888	.05711	.05543	.05382	.05229
44	.07370	.07132	.06906	.06691	.06486	.06291	.06105	.05928	.05759	.05598
45	.07850	.07602	.07365	.07139	.06924	.06719	.06524	.06338	.06160	.05990
46	.08360	.08100	.07852	.07616	.07390	.07176	.06970	.06775	.06587	.06409
47	.08897	.08626	.08367	.08120	.07884	.07659	.07443	.07238	.07041	.06853
48	.09466	.09183	.08912	.08654	.08407	.08172	.07946	.07730	.07524	.07326
49	.10069	.09774	.09492	.09222	.08964	.08717	.08481	.08255	.08038	.07831
50	.10711	.10403	.10109	.09827	.09558	.09300	.09053	.08816	.08589	.08371
51	.11392	.11072	.10765	.10472	.10191	.09921	.09663	.09415	.09178	.08950
52	.12116	.11783	.11464	.11159	.10866	.10585	.10315	.10057	.09808	.09569
53	.12883	.12538	.12206	.11889	.11584	.11291	.11010	.10740	.10481	.10231
54	.13694	.13336	.12992	.12662	.12345	.12041	.11748	.11467	.11196	.10936
55	.14547	.14176	.13820	.13478	.13149	.12832	.12528	.12235	.11953	.11682
56	.15437	.15054	.14685	.14330	.13989	.13661	.13345	.13040	.12747	.12464
57	.16365	.15969	.15588	.15221	.14868	.14527	.14199	.13883	.13578	.13284
58	.17330	.16921	.16528	.16149	.15783	.15431	.15091	.14763	.14447	.14141
59	.18335	.17914	.17508	.17117	.16739	.16375	.16023	.15684	.15356	.15039
60	.19385	.18952	.18534	.18131	.17741	.17365	.17001	.16650	.16311	.15982
61	.20480	.20035	.19605	.19189	.18788	.18400	.18025	.17662	.17311	.16971
62	.21615	.21158	.20717	.20290	.19877	.19477	.19090	.18716	.18354	.18003
63	.22791	.22323	.21870	.21431	.21007	.20596	.20198	.19812	.19439	.19077
64	.24009	.23530	.23066	.22616	.22181	.21758	.21349	.20953	.20568	.20195
65	.25271	.24781	.24306	.23846	.23400	.22967	.22547	.22139	.21744	.21360
66	.26600	.26100	.25615	.25145	.24688	.24245	.23814	.23396	.22990	.22596
67	.27992	.27483	.26989	.26509	.26043	.25590	.25150	.24722	.24306	.23901
68	.29443	.28926	.28423	.27934	.27459	.26997	.26548	.26110	.25685	.25271
69	.30950	.30424	.29914	.29417	.28934	.28463	.28005	.27559	.27125	.26703
70	.32508	.31976	.31459	.30955	.30464	.29986	.29520	.29067	.28625	.28194

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
71	.34122	.33585	.33062	.32552	.32054	.31570	.31097	.30637	.30187	.29749
72	.35790	.35249	.34721	.34205	.33703	.33213	.32734	.32268	.31812	.31367
73	.37505	.36960	.36428	.35909	.35403	.34908	.34425	.33953	.33492	.33042
74	.39258	.38711	.38177	.37655	.37145	.36647	.36160	.35684	.35219	.34764
75	.41039	.40491	.39956	.39432	.38921	.38420	.37931	.37452	.36983	.36525
76	.42843	.42296	.41760	.41236	.40724	.40222	.39731	.39250	.38779	.38318
77	.44668	.44122	.43588	.43065	.42552	.42050	.41559	.41077	.40605	.40143
78	.46510	.45967	.45435	.44914	.44403	.43902	.43411	.42930	.42458	.41995
79	.48365	.47826	.47298	.46780	.46271	.45773	.45284	.44804	.44333	.43871
80	.50226	.49693	.49169	.48655	.48150	.47655	.47169	.46692	.46224	.45763
81	.52090	.51562	.51044	.50536	.50036	.49546	.49064	.48590	.48125	.47668
82	.53951	.53431	.52920	.52418	.51924	.51439	.50963	.50494	.50033	.49580
83	.55802	.55291	.54788	.54294	.53808	.53329	.52859	.52396	.51941	.51493
84	.57640	.57139	.56645	.56159	.55681	.55210	.54747	.54291	.53843	.53401
85	.59459	.58968	.58484	.58008	.57539	.57077	.56623	.56175	.55733	.55298
86	.61254	.60774	.60302	.59836	.59377	.58925	.58479	.58040	.57607	.57180
87	.63019	.62551	.62090	.61635	.61187	.60745	.60309	.59880	.59456	.59038
88	.64751	.64296	.63847	.63405	.62968	.62537	.62112	.61693	.61279	.60871
89	.66444	.66003	.65567	.65137	.64712	.64293	.63880	.63471	.63068	.62670
90	.68094	.67667	.67244	.66827	.66415	.66009	.65607	.65210	.64818	.64431
91	.69699	.69285	.68877	.68473	.68074	.67680	.67291	.66906	.66526	.66150
92	.71254	.70855	.70460	.70071	.69685	.69304	.68928	.68555	.68187	.67823
93	.72753	.72369	.71989	.71613	.71242	.70874	.70510	.70150	.69794	.69442
94	.74200	.73830	.73464	.73103	.72745	.72390	.72040	.71693	.71350	.71010
95	.75591	.75236	.74885	.74538	.74194	.73853	.73516	.73182	.72851	.72524
96	.76920	.76580	.76243	.75909	.75579	.75252	.74928	.74607	.74289	.73974
97	.78188	.77863	.77540	.77220	.76904	.76590	.76279	.75971	.75665	.75363
98	.79399	.79088	.78779	.78473	.78170	.77869	.77571	.77276	.76983	.76693
99	.80555	.80257	.79962	.79670	.79380	.79092	.78807	.78525	.78244	.77966
100	.81641	.81357	.81075	.80796	.80518	.80243	.79971	.79700	.79432	.79165
101	.82683	.82412	.82144	.81877	.81612	.81350	.81089	.80831	.80574	.80320
102	.83652	.83394	.83137	.82882	.82630	.82379	.82130	.81883	.81637	.81394
103	.84624	.84379	.84135	.83892	.83652	.83413	.83176	.82941	.82707	.82475
104	.85519	.85285	.85053	.84822	.84593	.84365	.84139	.83915	.83692	.83470
105	.86400	.86178	.85957	.85737	.85519	.85302	.85087	.84873	.84660	.84449
106	.87523	.87316	.87110	.86905	.86702	.86500	.86299	.86099	.85900	.85703
107	.88806	.88617	.88429	.88242	.88055	.87870	.87686	.87502	.87320	.87139
108	.90958	.90802	.90646	.90490	.90336	.90182	.90028	.89876	.89724	.89573
109	.95372	.95290	.95208	.95126	.95045	.94964	.94883	.94803	.94723	.94643

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
0	.00972	.00961	.00951	.00941	.00932	.00924	.00916	.00908	.00901	.00894
1	.00355	.00345	.00334	.00325	.00316	.00307	.00299	.00292	.00285	.00278
2	.00346	.00334	.00323	.00313	.00303	.00294	.00286	.00278	.00270	.00263
3	.00353	.00340	.00329	.00318	.00307	.00298	.00289	.00280	.00272	.00264
4	.00369	.00356	.00343	.00332	.00321	.00310	.00300	.00291	.00283	.00274
5	.00392	.00377	.00364	.00352	.00340	.00329	.00318	.00308	.00299	.00290
6	.00420	.00405	.00391	.00377	.00365	.00353	.00342	.00331	.00321	.00311
7	.00452	.00436	.00421	.00406	.00393	.00380	.00368	.00357	.00346	.00336
8	.00490	.00473	.00457	.00441	.00427	.00413	.00400	.00388	.00376	.00365
9	.00535	.00517	.00499	.00483	.00467	.00453	.00439	.00426	.00413	.00402
10	.00587	.00567	.00548	.00531	.00514	.00499	.00484	.00470	.00456	.00444
11	.00645	.00624	.00605	.00586	.00568	.00551	.00536	.00521	.00506	.00493
12	.00711	.00689	.00668	.00648	.00629	.00611	.00595	.00579	.00563	.00549
13	.00781	.00757	.00735	.00714	.00694	.00675	.00657	.00640	.00624	.00609
14	.00851	.00826	.00802	.00780	.00759	.00739	.00720	.00702	.00684	.00668
15	.00918	.00891	.00866	.00842	.00820	.00799	.00779	.00759	.00741	.00724
16	.00979	.00950	.00924	.00899	.00875	.00853	.00832	.00811	.00792	.00774
17	.01035	.01006	.00978	.00951	.00926	.00902	.00880	.00859	.00838	.00819
18	.01088	.01057	.01027	.00999	.00973	.00948	.00924	.00901	.00880	.00860
19	.01139	.01106	.01075	.01045	.01017	.00990	.00965	.00942	.00919	.00898
20	.01192	.01157	.01124	.01092	.01063	.01035	.01008	.00983	.00959	.00936
21	.01245	.01208	.01173	.01139	.01108	.01078	.01050	.01023	.00998	.00974
22	.01300	.01260	.01222	.01187	.01154	.01122	.01092	.01064	.01037	.01011
23	.01357	.01315	.01275	.01238	.01202	.01168	.01137	.01106	.01078	.01051
24	.01422	.01377	.01334	.01294	.01257	.01221	.01187	.01155	.01124	.01095
25	.01496	.01448	.01403	.01361	.01320	.01282	.01246	.01212	.01180	.01149
26	.01582	.01531	.01483	.01438	.01395	.01354	.01316	.01279	.01244	.01211
27	.01680	.01626	.01575	.01527	.01481	.01437	.01396	.01357	.01320	.01285
28	.01791	.01734	.01679	.01628	.01579	.01533	.01489	.01447	.01408	.01370
29	.01914	.01853	.01795	.01740	.01688	.01639	.01592	.01548	.01505	.01465
30	.02048	.01982	.01921	.01862	.01807	.01754	.01704	.01657	.01612	.01569
31	.02193	.02124	.02058	.01996	.01937	.01881	.01828	.01777	.01729	.01683
32	.02351	.02278	.02208	.02142	.02079	.02019	.01962	.01908	.01857	.01808
33	.02523	.02445	.02371	.02300	.02234	.02170	.02109	.02052	.01997	.01944
34	.02707	.02624	.02545	.02470	.02399	.02331	.02267	.02205	.02146	.02091

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
35	.02905	.02817	.02733	.02653	.02577	.02505	.02436	.02371	.02308	.02249
36	.03117	.03024	.02935	.02850	.02769	.02693	.02619	.02550	.02483	.02419
37	.03345	.03246	.03151	.03061	.02976	.02894	.02816	.02742	.02671	.02603
38	.03590	.03485	.03385	.03289	.03198	.03112	.03029	.02950	.02874	.02802
39	.03852	.03740	.03634	.03533	.03436	.03344	.03256	.03172	.03092	.03015
40	.04131	.04013	.03900	.03793	.03690	.03593	.03499	.03410	.03324	.03242
41	.04428	.04303	.04184	.04070	.03962	.03858	.03759	.03664	.03573	.03486
42	.04744	.04612	.04486	.04366	.04250	.04140	.04035	.03934	.03838	.03745
43	.05083	.04943	.04810	.04683	.04561	.04444	.04333	.04226	.04123	.04025
44	.05443	.05296	.05155	.05021	.04892	.04768	.04650	.04537	.04428	.04324
45	.05827	.05672	.05523	.05381	.05245	.05114	.04989	.04869	.04754	.04643
46	.06237	.06074	.05917	.05767	.05623	.05485	.05352	.05225	.05103	.04986
47	.06673	.06500	.06335	.06177	.06025	.05879	.05739	.05605	.05475	.05351
48	.07137	.06955	.06781	.06614	.06454	.06300	.06152	.06010	.05874	.05742
49	.07632	.07441	.07258	.07082	.06913	.06750	.06595	.06444	.06300	.06161
50	.08162	.07962	.07769	.07584	.07407	.07236	.07071	.06913	.06760	.06614
51	.08731	.08520	.08318	.08124	.07937	.07757	.07583	.07416	.07256	.07101
52	.09340	.09119	.08907	.08703	.08507	.08317	.08135	.07959	.07790	.07627
53	.09991	.09760	.09538	.09324	.09118	.08919	.08728	.08543	.08365	.08193
54	.10685	.10443	.10211	.09987	.09771	.09562	.09361	.09167	.08980	.08799
55	.11420	.11168	.10925	.10690	.10464	.10246	.10035	.09832	.09635	.09445
56	.12191	.11928	.11675	.11430	.11193	.10965	.10745	.10531	.10325	.10126
57	.13001	.12727	.12462	.12207	.11960	.11721	.11491	.11268	.11052	.10843
58	.13846	.13561	.13286	.13020	.12762	.12513	.12273	.12040	.11814	.11595
59	.14732	.14436	.14150	.13873	.13605	.13346	.13095	.12851	.12616	.12388
60	.15665	.15358	.15060	.14772	.14494	.14224	.13962	.13709	.13463	.13225
61	.16642	.16324	.16016	.15717	.15428	.15147	.14875	.14611	.14355	.14107
62	.17663	.17333	.17014	.16704	.16404	.16113	.15830	.15556	.15290	.15031
63	.18726	.18385	.18055	.17734	.17423	.17121	.16828	.16544	.16267	.15999
64	.19833	.19481	.19140	.18809	.18487	.18175	.17871	.17576	.17289	.17010
65	.20987	.20624	.20273	.19931	.19598	.19275	.18961	.18656	.18358	.18069
66	.22213	.21840	.21478	.21125	.20783	.20449	.20125	.19809	.19501	.19202
67	.23508	.23125	.22753	.22390	.22037	.21694	.21360	.21034	.20716	.20407
68	.24868	.24476	.24094	.23722	.23359	.23006	.22662	.22327	.22000	.21681
69	.26291	.25889	.25498	.25117	.24745	.24383	.24030	.23685	.23349	.23020
70	.27773	.27364	.26964	.26574	.26194	.25823	.25461	.25107	.24762	.24425

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
71	.29321	.28904	.28496	.28099	.27710	.27331	.26961	.26599	.26246	.25900
72	.30933	.30508	.30094	.29689	.29294	.28907	.28530	.28160	.27799	.27446
73	.32602	.32171	.31751	.31340	.30938	.30545	.30160	.29784	.29416	.29056
74	.34319	.33884	.33458	.33042	.32634	.32236	.31845	.31463	.31089	.30723
75	.36076	.35637	.35207	.34786	.34374	.33970	.33575	.33188	.32808	.32437
76	.37867	.37425	.36991	.36567	.36151	.35744	.35344	.34953	.34569	.34192
77	.39690	.39245	.38810	.38383	.37964	.37554	.37151	.36756	.36369	.35989
78	.41541	.41096	.40659	.40231	.39811	.39398	.38993	.38596	.38206	.37823
79	.43418	.42973	.42536	.42107	.41686	.41272	.40866	.40467	.40075	.39691
80	.45311	.44868	.44432	.44003	.43582	.43169	.42763	.42363	.41971	.41585
81	.47219	.46777	.46343	.45916	.45497	.45084	.44679	.44280	.43888	.43502
82	.49135	.48696	.48265	.47841	.47424	.47014	.46610	.46213	.45822	.45437
83	.51052	.50618	.50191	.49771	.49357	.48950	.48549	.48154	.47766	.47383
84	.52966	.52537	.52115	.51700	.51291	.50887	.50490	.50099	.49714	.49334
85	.54870	.54448	.54032	.53622	.53218	.52820	.52428	.52041	.51660	.51284
86	.56759	.56344	.55935	.55532	.55135	.54742	.54356	.53974	.53598	.53227
87	.58626	.58219	.57818	.57422	.57031	.56646	.56266	.55891	.55521	.55155
88	.60468	.60070	.59677	.59290	.58907	.58529	.58157	.57788	.57425	.57066
89	.62277	.61888	.61505	.61126	.60753	.60383	.60018	.59658	.59302	.58950
90	.64048	.63670	.63296	.62927	.62563	.62202	.61846	.61494	.61146	.60803
91	.65778	.65411	.65048	.64689	.64334	.63983	.63636	.63293	.62954	.62619
92	.67462	.67106	.66754	.66406	.66061	.65720	.65383	.65050	.64720	.64393
93	.69094	.68749	.68408	.68071	.67737	.67406	.67079	.66756	.66435	.66118
94	.70673	.70340	.70011	.69685	.69362	.69042	.68725	.68412	.68102	.67794
95	.72199	.71878	.71560	.71246	.70934	.70625	.70319	.70016	.69716	.69419
96	.73662	.73353	.73047	.72743	.72443	.72145	.71850	.71557	.71268	.70981
97	.75063	.74766	.74471	.74180	.73890	.73604	.73319	.73038	.72758	.72482
98	.76405	.76120	.75837	.75557	.75279	.75003	.74730	.74459	.74190	.73923
99	.77690	.77417	.77146	.76877	.76610	.76345	.76083	.75822	.75564	.75308
100	.78901	.78639	.78379	.78121	.77866	.77612	.77360	.77110	.76862	.76616
101	.80067	.79816	.79568	.79321	.79076	.78832	.78591	.78351	.78114	.77877
102	.81152	.80912	.80674	.80438	.80203	.79970	.79738	.79508	.79280	.79054
103	.82245	.82016	.81789	.81563	.81339	.81116	.80895	.80676	.80458	.80241
104	.83250	.83031	.82814	.82599	.82384	.82171	.81960	.81750	.81541	.81334
105	.84239	.84030	.83823	.83617	.83412	.83209	.83006	.82806	.82606	.82407
106	.85507	.85311	.85117	.84924	.84733	.84542	.84352	.84164	.83976	.83790
107	.86958	.86779	.86600	.86422	.86246	.86070	.85895	.85721	.85548	.85376
108	.89422	.89272	.89123	.88974	.88826	.88679	.88533	.88386	.88241	.88096
109	.94563	.94484	.94405	.94326	.94248	.94170	.94092	.94014	.93937	.93860

BILLING CODE 4830–01–C

(f) *Effective/applicability date.* This section applies on and after May 1, 2009.

§ 1.642(c)–6T [Removed]

■ **Par. 5.** Section 1.642(c)–6T is removed.

■ **Par. 6.** Section 1.664–2 is amended by revising paragraphs (c) and (e) as follows:

§ 1.664–2 Charitable remainder annuity trust.

* * * * *

(c) *Calculation of the fair market value of the remainder interest of a charitable remainder annuity trust.* For purposes of sections 170, 2055, 2106, and 2522, the fair market value of the remainder interest of a charitable remainder annuity trust (as described in this section) is the net fair market value (as of the appropriate valuation date) of the property placed in trust less the present value of the annuity. For purposes of this section, valuation date means, in general, the date on which the property is transferred to the trust by the donor regardless of when the trust is created. In the case of transfers to a charitable remainder annuity trust for which the valuation date is after April 30, 1989, if an election is made under section 7520 and § 1.7520–2(b) to compute the present value of the charitable interest by use of the interest rate component for either of the 2 months preceding the month in which the transfer is made, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. For purposes of section 2055 or 2106, the valuation date is the date of death unless the alternate valuation date is elected in accordance with section 2032 in which event, and within the limitations set forth in section 2032 and the regulations under that section, the valuation date is the alternate valuation date. If the decedent's estate elects the alternate valuation date under section 2032 and also elects, under section 7520 and § 1.7520–2(b), to use the interest rate component for one of the 2 months preceding the alternate valuation date, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. The present value of an annuity is computed under § 20.2031–7(d) of this chapter for transfers for which the valuation date is on or after May 1, 2009, or under § 20.2031–7A(a) through (f), whichever is applicable, for transfers for which the valuation date is before May 1, 2009. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances).

* * * * *

(e) *Effective/applicability date.* Paragraph (c) applies after April 30, 1989.

■ **Par. 7.** Section 1.664–4 is amended by:

■ 1. Revising paragraphs (a)(1) and (d).

■ 2. Revising the heading for paragraph (e) and revising paragraphs (e)(1), (e)(2), (e)(5), (e)(7) and (f).

The revisions read as follows:

§ 1.664–4 Calculation of the fair market value of the remainder interest in a charitable remainder unitrust.

(a) * * *

(1) Life contingencies determined as to each life involved, from the values of *lx* set forth in Table 2000CM contained in § 20.2031–7(d)(7) of this chapter in the case of transfers for which the valuation date is on or after May 1, 2009; or from Table 90CM contained in § 20.2031–7A(f)(4) in the case of transfers for which the valuation date is after April 30, 1999, and before May 1, 2009. See § 20.2031–7A(a) through (e), whichever is applicable, for transfers for which the valuation date is before May 1, 1999;

* * * * *

(d) *Valuation.* The fair market value of a remainder interest in a charitable remainder unitrust (as described in § 1.664–3) for transfers for which the valuation date is on or after May 1, 2009, is its present value determined under paragraph (e) of this section. The fair market value of a remainder interest in a charitable remainder unitrust (as described in § 1.664–3) for transfers for which the valuation date is before May 1, 2009, is its present value determined under the following sections:

Valuation dates		*Applicable regulations*
After	Before	
—	01–01–52	1.664–4A(a)
12–31–51	01–01–71	1.664–4A(b)
12–31–70	12–01–83	1.664–4A(c)
11–30–83	05–01–89	1.664–4A(d)
04–30–89	05–01–99	1.664–4A(e)
04–30–99	05–01–09	1.664–4A(f)

(e) *Valuation of charitable remainder unitrusts having certain payout sequences for transfers for which the valuation date is on or after May 1, 2009*—(1) *In general.* Except as otherwise provided in paragraph (e)(2) of this section, in the case of transfers for which the valuation date is on or after May 1, 2009, the present value of a remainder interest is determined under paragraphs (e)(3) through (e)(7) of this section, provided that the amount of the payout as of any payout date during any taxable year of the trust is not larger than the amount that the trust could distribute on such date under § 1.664–3(a)(1)(v) if the taxable year of the trust were to end on such date. See, however, § 1.7520–3(b) (relating to exceptions to the use of the prescribed tables under certain circumstances).

(2) *Transitional rules for valuation of charitable remainder unitrusts.* (i) For purposes of sections 2055, 2106, or 2624, if on May 1, 2009, the decedent was mentally incompetent so that the disposition of the property could not be changed, and the decedent died on or after May 1, 2009, without having regained competency to dispose of the decedent's property, or the decedent died within 90 days of the date that the decedent first regained competency on or after May 1, 2009, the present value of a remainder interest under this section is determined as if the valuation date with respect to the decedent's gross estate is either before or after May 1, 2009, at the option of the decedent's executor.

(ii) For purposes of sections 170, 2055, 2106, 2522, or 2624, in the case of transfers to a charitable remainder unitrust for which the valuation date is on or after May 1, 2009, and before July 1, 2009, the present value of a remainder interest based on one or more measuring lives is determined under this section by use of the section 7520 interest rate for the month in which the valuation date occurs (see §§ 1.7520–1(b) and 1.7520–2(a)(2)) and the appropriate actuarial tables under either paragraph (e)(7) of this section or § 1.664–4A(f)(6), at the option of the donor or the decedent's executor, as the case may be.

(iii) For purposes of paragraphs (e)(2)(i) and (e)(2)(ii) of this section, where the donor or decedent's executor is given the option to use the appropriate actuarial tables under either paragraph (e)(7) of this section or § 1.664–4A(f)(6), the donor or decedent's executor must use the same actuarial table with respect to each individual transaction and with respect to all transfers occurring on the valuation date (for example, gift and income tax charitable deductions with respect to the same transfer must be determined based on the same tables, and all assets includible in the gross estate and/or estate tax deductions claimed must be valued based on the same tables).

* * * * *

(5) *Period is the life of one individual.* (i) If the period described in § 1.664–

3(a)(5) is the life of one individual, the factor that is used in determining the present value of the remainder interest for transfers for which the valuation date is on or after May 1, 2009, is the factor in Table U(1) in paragraph (e)(7) of this section under the appropriate adjusted payout. For purposes of the computations described in this paragraph (e)(5), the age of an individual is the age of that individual at the individual's nearest birthday. If the adjusted payout rate is an amount that is between adjusted payout rates for which factors are provided in the appropriate table, a linear interpolation must be made. The present value of the remainder interest is determined by multiplying the net fair market value (as of the valuation date as determined in paragraph (e)(4) of this section) of the property placed in trust by the factor determined under this paragraph (e)(5). If the adjusted payout rate is between 4.2 and 14 percent, see paragraph (e)(7) of this section. If the adjusted payout rate is below 4.2 percent or greater than 14 percent, see paragraph (b) of this section.

(ii) The application of paragraph (e)(5)(i) of this section may be illustrated by the following example:

Example. A, who is 44 years and 11 months old, transfers $100,000 to a charitable remainder unitrust on January 1st. The trust instrument requires that the trust pay to A semiannually (on June 30 and December 31) 8 percent of the fair market value of the trust assets as of January 1st during A's life. The section 7520 rate for January is 6.6 percent. Under Table F(6.6) in paragraph (e)(6) of this section, the appropriate adjustment factor is .953317 for semiannual payments payable at the end of the semiannual period. The adjusted payout rate is 7.627% (8% × .953317). Based on the remainder factors in Table U(1) in this section, the present value of the remainder interest is $11,075.00, computed as follows:

Factor at 7.6 percent at age 45	.11141
Factor at 7.8 percent at age 45	.10653
Difference	.00488

Interpolation adjustment:

$$\frac{7.627\% - 7.6\%}{0.2\%} = \frac{x}{.00488}$$

$$x = .00066$$

Factor at 7.6 percent at age 45	.11141
Less: Interpolation adjustment	.00066
Interpolated Factor	.11075

Present value of remainder interest:

($100,000 X .11075) $11,075.00

* * * * *

(7) *Actuarial Table U(1) for transfers for which the valuation date is on or after May 1, 2009.* For transfers for which the valuation date is on or after May 1, 2009, the present value of a charitable remainder unitrust interest that is dependent on the termination of a life interest is determined by using the section 7520 rate, Table U(1) in this paragraph (e)(7) and Table F(4.2) through (14.0) in paragraph (e)(6) of this section. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). Many actuarial factors not contained in the following tables are contained in Internal Revenue Service Publication 1458, ''Actuarial Valuations Version 3B'' (2009). This publication is available, at no charge, electronically via the IRS Internet site at *http://www.irs.gov.*

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Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
0	.05527	.04953	.04455	.04023	.03648	.03321	.03037	.02789	.02573	.02383
1	.05095	.04501	.03986	.03538	.03148	.02809	.02513	.02255	.02029	.01831
2	.05269	.04659	.04128	.03666	.03264	.02913	.02606	.02338	.02103	.01896
3	.05468	.04841	.04295	.03818	.03403	.03040	.02722	.02443	.02199	.01984
4	.05684	.05039	.04477	.03986	.03557	.03181	.02852	.02563	.02309	.02085
5	.05912	.05251	.04672	.04166	.03723	.03335	.02993	.02694	.02429	.02197
6	.06154	.05475	.04880	.04359	.03901	.03500	.03146	.02835	.02561	.02319
7	.06407	.05709	.05097	.04561	.04089	.03673	.03308	.02985	.02700	.02448
8	.06672	.05956	.05328	.04775	.04288	.03859	.03481	.03146	.02850	.02588
9	.06951	.06217	.05571	.05002	.04500	.04057	.03665	.03319	.03012	.02739
10	.07244	.06491	.05827	.05241	.04724	.04266	.03861	.03503	.03184	.02901
11	.07550	.06778	.06096	.05494	.04961	.04489	.04070	.03698	.03368	.03074
12	.07869	.07078	.06378	.05759	.05210	.04723	.04290	.03906	.03563	.03258
13	.08199	.07389	.06670	.06034	.05468	.04966	.04519	.04121	.03767	.03450
14	.08536	.07706	.06969	.06315	.05733	.05215	.04754	.04342	.03975	.03646
15	.08877	.08027	.07271	.06599	.06000	.05467	.04990	.04565	.04184	.03844
16	.09221	.08351	.07576	.06885	.06269	.05719	.05228	.04788	.04394	.04041
17	.09570	.08679	.07885	.07176	.06542	.05975	.05468	.05014	.04606	.04240
18	.09925	.09014	.08199	.07471	.06820	.06236	.05712	.05243	.04821	.04442
19	.10289	.09356	.08522	.07774	.07104	.06503	.05963	.05478	.05041	.04648
20	.10665	.09711	.08856	.08089	.07400	.06781	.06224	.05723	.05272	.04864
21	.11052	.10077	.09201	.08413	.07706	.07068	.06495	.05977	.05510	.05088
22	.11452	.10455	.09558	.08750	.08023	.07367	.06776	.06241	.05759	.05322
23	.11867	.10848	.09929	.09101	.08354	.07680	.07070	.06519	.06019	.05567
24	.12300	.11259	.10319	.09470	.08703	.08009	.07381	.06812	.06297	.05829
25	.12755	.11691	.10730	.09860	.09073	.08359	.07713	.07126	.06593	.06109
26	.13232	.12146	.11163	.10272	.09464	.08731	.08065	.07460	.06910	.06409
27	.13732	.12624	.11619	.10706	.09878	.09125	.08440	.07816	.07248	.06731
28	.14255	.13125	.12098	.11164	.10315	.09542	.08837	.08195	.07609	.07074
29	.14799	.13647	.12598	.11644	.10773	.09980	.09256	.08594	.07990	.07438
30	.15365	.14191	.13120	.12144	.11252	.10438	.09694	.09014	.08391	.07821
31	.15952	.14756	.13664	.12666	.11754	.10919	.10155	.09455	.08813	.08225
32	.16561	.15343	.14230	.13210	.12277	.11422	.10637	.09918	.09257	.08650
33	.17193	.15954	.14819	.13778	.12824	.11948	.11143	.10403	.09724	.09098
34	.17845	.16585	.15429	.14367	.13391	.12495	.11670	.10910	.10211	.09566

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
35	.18520	.17239	.16062	.14979	.13982	.13065	.12219	.11440	.10721	.10057
36	.19218	.17916	.16718	.15614	.14597	.13659	.12793	.11993	.11254	.10571
37	.19938	.18617	.17398	.16274	.15236	.14276	.13390	.12570	.11812	.11110
38	.20683	.19342	.18103	.16958	.15900	.14920	.14013	.13173	.12395	.11673
39	.21450	.20090	.18832	.17667	.16588	.15588	.14661	.13801	.13003	.12261
40	.22241	.20862	.19585	.18400	.17301	.16281	.15334	.14454	.13636	.12875
41	.23055	.21659	.20362	.19158	.18040	.17000	.16033	.15133	.14295	.13514
42	.23892	.22479	.21164	.19942	.18804	.17744	.16757	.15838	.14980	.14180
43	.24756	.23326	.21994	.20753	.19596	.18517	.17511	.16572	.15695	.14875
44	.25644	.24198	.22849	.21590	.20415	.19318	.18293	.17334	.16438	.15599
45	.26557	.25096	.23731	.22455	.21263	.20147	.19103	.18125	.17210	.16352
46	.27496	.26021	.24641	.23349	.22139	.21006	.19943	.18947	.18013	.17136
47	.28460	.26972	.25578	.24270	.23044	.21893	.20813	.19799	.18846	.17951
48	.29451	.27950	.26542	.25220	.23978	.22811	.21714	.20682	.19712	.18798
49	.30468	.28957	.27536	.26201	.24944	.23761	.22648	.21599	.20611	.19679
50	.31515	.29994	.28562	.27214	.25943	.24746	.23617	.22552	.21547	.20598
51	.32591	.31062	.29620	.28260	.26976	.25765	.24621	.23541	.22520	.21554
52	.33697	.32161	.30710	.29340	.28045	.26821	.25663	.24568	.23531	.22550
53	.34832	.33291	.31833	.30453	.29148	.27912	.26741	.25632	.24582	.23585
54	.35995	.34449	.32985	.31598	.30283	.29037	.27855	.26733	.25669	.24658
55	.37183	.35635	.34166	.32773	.31450	.30194	.29001	.27868	.26791	.25768
56	.38390	.36841	.35370	.33971	.32642	.31378	.30175	.29032	.27943	.26907
57	.39618	.38069	.36596	.35194	.33859	.32588	.31377	.30224	.29125	.28077
58	.40862	.39316	.37842	.36438	.35099	.33822	.32605	.31443	.30334	.29276
59	.42126	.40583	.39110	.37705	.36364	.35083	.33859	.32691	.31574	.30506
60	.43410	.41873	.40403	.38999	.37656	.36372	.35145	.33970	.32846	.31770
61	.44714	.43183	.41718	.40316	.38974	.37689	.36458	.35279	.34149	.33067
62	.46033	.44510	.43052	.41653	.40313	.39028	.37796	.36614	.35480	.34391
63	.47366	.45853	.44402	.43010	.41673	.40390	.39157	.37974	.36836	.35744
64	.48712	.47212	.45770	.44385	.43053	.41773	.40542	.39358	.38219	.37123
65	.50073	.48586	.47156	.45779	.44454	.43179	.41951	.40768	.39629	.38531
66	.51461	.49990	.48573	.47207	.45891	.44623	.43400	.42220	.41083	.39985
67	.52872	.51419	.50018	.48665	.47360	.46100	.44884	.43710	.42576	.41481
68	.54302	.52869	.51484	.50147	.48854	.47605	.46398	.45231	.44103	.43011
69	.55744	.54333	.52968	.51648	.50371	.49134	.47938	.46780	.45659	.44573
70	.57198	.55810	.54467	.53165	.51905	.50683	.49500	.48352	.47241	.46163

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
71	.58662	.57300	.55980	.54700	.53458	.52253	.51084	.49950	.48849	.47781
72	.60134	.58800	.57505	.56247	.55026	.53840	.52688	.51569	.50481	.49425
73	.61608	.60303	.59035	.57803	.56604	.55439	.54305	.53203	.52131	.51087
74	.63077	.61804	.60565	.59358	.58184	.57041	.55928	.54844	.53789	.52761
75	.64536	.63295	.62085	.60907	.59759	.58639	.57548	.56485	.55447	.54436
76	.65980	.64772	.63594	.62445	.61323	.60229	.59162	.58120	.57102	.56110
77	.67408	.66234	.65089	.63970	.62877	.61809	.60766	.59747	.58751	.57779
78	.68817	.67679	.66567	.65479	.64416	.63376	.62359	.61364	.60392	.59440
79	.70205	.69104	.68026	.66971	.65938	.64927	.63937	.62968	.62019	.61090
80	.71569	.70504	.69461	.68439	.67438	.66457	.65495	.64553	.63629	.62724
81	.72905	.71878	.70871	.69883	.68914	.67963	.67031	.66116	.65219	.64339
82	.74213	.73224	.72252	.71299	.70363	.69444	.68541	.67655	.66785	.65930
83	.75489	.74538	.73603	.72684	.71781	.70894	.70022	.69165	.68323	.67495
84	.76731	.75818	.74919	.74036	.73167	.72312	.71471	.70644	.69830	.69029
85	.77937	.77062	.76200	.75352	.74516	.73694	.72884	.72087	.71302	.70529
86	.79106	.78268	.77443	.76629	.75828	.75038	.74260	.73493	.72738	.71993
87	.80235	.79434	.78645	.77866	.77098	.76341	.75595	.74858	.74132	.73416
88	.81324	.80560	.79806	.79062	.78328	.77603	.76888	.76182	.75486	.74798
89	.82371	.81643	.80924	.80214	.79513	.78821	.78137	.77461	.76794	.76134
90	.83375	.82682	.81998	.81321	.80653	.79992	.79339	.78693	.78055	.77424
91	.84336	.83678	.83027	.82383	.81747	.81117	.80494	.79878	.79268	.78665
92	.85253	.84629	.84011	.83399	.82794	.82194	.81601	.81014	.80433	.79857
93	.86126	.85534	.84948	.84367	.83792	.83222	.82658	.82099	.81545	.80997
94	.86956	.86395	.85840	.85289	.84743	.84202	.83666	.83134	.82608	.82086
95	.87744	.87213	.86687	.86166	.85648	.85135	.84626	.84122	.83621	.83125
96	.88487	.87985	.87488	.86994	.86504	.86017	.85535	.85056	.84581	.84109
97	.89188	.88714	.88244	.87776	.87312	.86852	.86395	.85941	.85490	.85042
98	.89850	.89402	.88958	.88516	.88077	.87641	.87208	.86778	.86351	.85927
99	.90475	.90053	.89632	.89215	.88800	.88388	.87978	.87571	.87167	.86765
100	.91057	.90658	.90261	.89867	.89475	.89085	.88697	.88312	.87929	.87548
101	.91610	.91234	.90860	.90487	.90117	.89749	.89382	.89018	.88655	.88295
102	.92122	.91767	.91413	.91061	.90711	.90363	.90017	.89672	.89328	.88987
103	.92630	.92296	.91963	.91632	.91303	.90975	.90648	.90323	.89999	.89677
104	.93097	.92783	.92470	.92158	.91847	.91537	.91229	.90922	.90616	.90312
105	.93558	.93263	.92969	.92676	.92383	.92092	.91802	.91513	.91225	.90938
106	.94135	.93864	.93594	.93325	.93057	.92789	.92522	.92256	.91991	.91726
107	.94789	.94546	.94304	.94062	.93821	.93580	.93340	.93101	.92861	.92623
108	.95844	.95648	.95453	.95258	.95063	.94868	.94673	.94478	.94284	.94090
109	.97900	.97800	.97700	.97600	.97500	.97400	.97300	.97200	.97100	.97000

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
0	.02217	.02071	.01942	.01829	.01729	.01640	.01561	.01491	.01429	.01373
1	.01657	.01504	.01369	.01250	.01145	.01053	.00970	.00897	.00831	.00773
2	.01715	.01555	.01415	.01290	.01180	.01082	.00996	.00918	.00850	.00788
3	.01795	.01628	.01481	.01350	.01235	.01132	.01041	.00960	.00887	.00822
4	.01888	.01714	.01560	.01423	.01302	.01194	.01098	.01013	.00936	.00867
5	.01991	.01809	.01648	.01505	.01378	.01265	.01164	.01074	.00993	.00921
6	.02104	.01914	.01746	.01597	.01463	.01345	.01239	.01144	.01059	.00982
7	.02225	.02027	.01851	.01695	.01555	.01430	.01319	.01219	.01130	.01049
8	.02356	.02149	.01965	.01802	.01656	.01525	.01408	.01303	.01209	.01124
9	.02497	.02282	.02090	.01919	.01766	.01629	.01506	.01396	.01296	.01207
10	.02649	.02425	.02224	.02046	.01885	.01742	.01613	.01497	.01392	.01298
11	.02812	.02578	.02369	.02182	.02015	.01865	.01729	.01608	.01498	.01398
12	.02986	.02742	.02525	.02329	.02154	.01997	.01855	.01727	.01612	.01508
13	.03167	.02914	.02687	.02483	.02300	.02135	.01987	.01853	.01732	.01622
14	.03352	.03089	.02852	.02640	.02449	.02276	.02121	.01981	.01854	.01738
15	.03538	.03264	.03018	.02797	.02597	.02417	.02255	.02107	.01974	.01853
16	.03724	.03439	.03183	.02952	.02744	.02556	.02385	.02231	.02092	.01965
17	.03911	.03615	.03348	.03107	.02890	.02694	.02516	.02354	.02208	.02075
18	.04100	.03792	.03515	.03264	.03037	.02832	.02646	.02477	.02323	.02184
19	.04294	.03974	.03685	.03424	.03188	.02973	.02778	.02602	.02441	.02294
20	.04497	.04165	.03864	.03592	.03345	.03121	.02918	.02732	.02564	.02410
21	.04707	.04362	.04049	.03766	.03508	.03275	.03062	.02868	.02691	.02530
22	.04926	.04568	.04243	.03948	.03679	.03435	.03212	.03009	.02824	.02655
23	.05157	.04785	.04447	.04140	.03860	.03605	.03372	.03160	.02965	.02788
24	.05404	.05017	.04666	.04346	.04054	.03788	.03545	.03322	.03119	.02932
25	.05668	.05268	.04902	.04569	.04265	.03987	.03733	.03500	.03287	.03091
26	.05953	.05537	.05157	.04811	.04494	.04204	.03938	.03695	.03472	.03267
27	.06258	.05827	.05433	.05072	.04742	.04440	.04163	.03908	.03674	.03459
28	.06585	.06138	.05729	.05354	.05011	.04695	.04406	.04140	.03895	.03670
29	.06932	.06469	.06044	.05655	.05297	.04969	.04667	.04389	.04132	.03896
30	.07298	.06818	.06378	.05974	.05602	.05260	.04944	.04654	.04386	.04139
31	.07684	.07188	.06732	.06312	.05925	.05569	.05241	.04937	.04657	.04399
32	.08092	.07578	.07106	.06670	.06268	.05898	.05556	.05239	.04947	.04676
33	.08522	.07991	.07501	.07050	.06633	.06247	.05891	.05561	.05256	.04972
34	.08972	.08423	.07917	.07449	.07016	.06615	.06244	.05901	.05582	.05286

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
35	.09444	.08878	.08354	.07869	.07420	.07004	.06618	.06260	.05928	.05619
36	.09940	.09355	.08814	.08312	.07846	.07415	.07013	.06641	.06294	.05972
37	.10459	.09856	.09297	.08777	.08295	.07847	.07431	.07043	.06682	.06346
38	.11004	.10382	.09805	.09268	.08769	.08304	.07872	.07469	.07093	.06742
39	.11573	.10932	.10337	.09782	.09266	.08784	.08336	.07917	.07526	.07161
40	.12167	.11508	.10893	.10321	.09787	.09289	.08824	.08389	.07982	.07602
41	.12787	.12109	.11476	.10885	.10334	.09818	.09336	.08885	.08463	.08068
42	.13433	.12736	.12085	.11476	.10906	.10373	.09874	.09406	.08968	.08557
43	.14109	.13393	.12723	.12095	.11508	.10957	.10441	.09957	.09502	.09075
44	.14814	.14078	.13389	.12744	.12138	.11569	.11036	.10534	.10063	.09620
45	.15548	.14793	.14086	.13421	.12797	.12211	.11659	.11141	.10653	.10193
46	.16313	.15540	.14814	.14131	.13488	.12884	.12315	.11779	.11274	.10798
47	.17109	.16318	.15573	.14871	.14210	.13588	.13001	.12448	.11925	.11432
48	.17938	.17128	.16364	.15645	.14966	.14325	.13721	.13150	.12610	.12100
49	.18801	.17973	.17191	.16453	.15756	.15098	.14475	.13887	.13330	.12803
50	.19702	.18856	.18057	.17301	.16586	.15910	.15270	.14663	.14089	.13545
51	.20642	.19778	.18961	.18188	.17456	.16762	.16104	.15480	.14889	.14328
52	.21621	.20741	.19907	.19117	.18367	.17656	.16981	.16340	.15732	.15153
53	.22641	.21745	.20894	.20087	.19321	.18593	.17901	.17243	.16617	.16022
54	.23699	.22788	.21922	.21098	.20316	.19571	.18862	.18188	.17546	.16934
55	.24794	.23868	.22987	.22148	.21350	.20589	.19865	.19174	.18516	.17888
56	.25920	.24981	.24085	.23232	.22418	.21642	.20902	.20195	.19521	.18877
57	.27078	.26126	.25217	.24349	.23521	.22730	.21975	.21253	.20563	.19904
58	.28266	.27301	.26379	.25498	.24656	.23851	.23081	.22345	.21640	.20965
59	.29486	.28510	.27576	.26682	.25827	.25009	.24225	.23474	.22755	.22065
60	.30740	.29754	.28810	.27905	.27037	.26206	.25409	.24645	.23911	.23208
61	.32029	.31033	.30079	.29164	.28285	.27442	.26632	.25855	.25109	.24391
62	.33347	.32344	.31381	.30455	.29567	.28712	.27891	.27102	.26343	.25613
63	.34693	.33684	.32713	.31779	.30881	.30017	.29185	.28385	.27614	.26872
64	.36069	.35054	.34076	.33135	.32229	.31356	.30515	.29704	.28922	.28169
65	.37474	.36455	.35472	.34525	.33612	.32731	.31881	.31061	.30270	.29506
66	.38927	.37905	.36919	.35968	.35049	.34161	.33304	.32476	.31676	.30903
67	.40423	.39401	.38413	.37458	.36535	.35643	.34780	.33946	.33138	.32357
68	.41956	.40935	.39947	.38991	.38066	.37170	.36303	.35464	.34650	.33863
69	.43522	.42504	.41518	.40562	.39636	.38739	.37869	.37026	.36208	.35415
70	.45118	.44104	.43121	.42168	.41243	.40346	.39475	.38629	.37809	.37012

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
71	.46744	.45737	.44759	.43810	.42888	.41992	.41122	.40276	.39455	.38656
72	.48398	.47399	.46429	.45486	.44568	.43676	.42808	.41964	.41143	.40344
73	.50072	.49084	.48123	.47187	.46276	.45389	.44526	.43685	.42866	.42068
74	.51759	.50784	.49833	.48907	.48004	.47124	.46267	.45431	.44616	.43821
75	.53450	.52488	.51550	.50635	.49743	.48872	.48022	.47192	.46383	.45592
76	.55140	.54194	.53270	.52368	.51487	.50626	.49785	.48964	.48161	.47377
77	.56828	.55898	.54990	.54102	.53234	.52385	.51555	.50744	.49950	.49173
78	.58509	.57598	.56707	.55835	.54981	.54146	.53328	.52528	.51744	.50977
79	.60181	.59290	.58417	.57562	.56725	.55904	.55100	.54313	.53541	.52785
80	.61837	.60967	.60114	.59278	.58458	.57653	.56865	.56091	.55333	.54589
81	.63475	.62627	.61795	.60979	.60177	.59391	.58619	.57861	.57117	.56386
82	.65091	.64267	.63457	.62661	.61880	.61112	.60358	.59617	.58888	.58173
83	.66681	.65881	.65094	.64321	.63560	.62812	.62077	.61353	.60642	.59942
84	.68241	.67466	.66703	.65952	.65214	.64487	.63771	.63067	.62373	.61691
85	.69768	.69019	.68280	.67553	.66837	.66132	.65437	.64753	.64078	.63414
86	.71259	.70536	.69822	.69120	.68427	.67744	.67070	.66406	.65752	.65107
87	.72709	.72012	.71325	.70647	.69977	.69317	.68666	.68023	.67389	.66764
88	.74119	.73449	.72787	.72134	.71489	.70852	.70223	.69602	.68989	.68384
89	.75483	.74840	.74204	.73576	.72955	.72342	.71736	.71138	.70546	.69962
90	.76800	.76183	.75573	.74971	.74375	.73785	.73202	.72626	.72056	.71493
91	.78069	.77479	.76895	.76317	.75745	.75180	.74620	.74067	.73519	.72977
92	.79288	.78724	.78165	.77613	.77065	.76524	.75987	.75456	.74930	.74409
93	.80453	.79915	.79382	.78854	.78331	.77812	.77299	.76790	.76286	.75787
94	.81568	.81055	.80547	.80043	.79544	.79048	.78557	.78071	.77588	.77110
95	.82633	.82144	.81660	.81180	.80704	.80231	.79763	.79298	.78837	.78380
96	.83642	.83177	.82717	.82259	.81806	.81356	.80909	.80465	.80025	.79588
97	.84598	.84157	.83719	.83284	.82853	.82424	.81998	.81576	.81156	.80739
98	.85505	.85086	.84670	.84257	.83847	.83439	.83034	.82631	.82232	.81835
99	.86365	.85968	.85573	.85181	.84791	.84404	.84019	.83636	.83255	.82877
100	.87169	.86792	.86418	.86045	.85675	.85307	.84941	.84577	.84215	.83855
101	.87936	.87579	.87224	.86871	.86520	.86171	.85823	.85477	.85133	.84791
102	.88647	.88309	.87972	.87637	.87304	.86972	.86642	.86313	.85986	.85660
103	.89356	.89036	.88718	.88402	.88086	.87772	.87460	.87149	.86839	.86531
104	.90008	.89706	.89405	.89105	.88807	.88509	.88213	.87918	.87624	.87331
105	.90652	.90366	.90082	.89799	.89517	.89236	.88955	.88676	.88398	.88120
106	.91462	.91199	.90937	.90675	.90414	.90154	.89895	.89636	.89378	.89121
107	.92385	.92147	.91910	.91673	.91437	.91201	.90966	.90731	.90497	.90263
108	.93896	.93702	.93509	.93316	.93123	.92930	.92737	.92544	.92352	.92160
109	.96900	.96800	.96700	.96600	.96500	.96400	.96300	.96200	.96100	.96000

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
0	.01323	.01279	.01238	.01202	.01169	.01139	.01112	.01088	.01065	.01044
1	.00721	.00674	.00632	.00594	.00559	.00528	.00500	.00474	.00451	.00430
2	.00733	.00683	.00639	.00598	.00562	.00529	.00499	.00472	.00447	.00425
3	.00764	.00711	.00664	.00622	.00583	.00548	.00516	.00487	.00461	.00437
4	.00806	.00750	.00700	.00655	.00614	.00577	.00543	.00513	.00485	.00459
5	.00856	.00797	.00744	.00696	.00653	.00614	.00578	.00545	.00515	.00488
6	.00914	.00852	.00795	.00745	.00699	.00657	.00619	.00584	.00552	.00523
7	.00976	.00911	.00851	.00798	.00749	.00704	.00664	.00627	.00593	.00562
8	.01047	.00978	.00915	.00858	.00806	.00759	.00716	.00677	.00640	.00607
9	.01126	.01053	.00986	.00926	.00871	.00821	.00775	.00734	.00695	.00660
10	.01213	.01136	.01065	.01002	.00944	.00891	.00842	.00798	.00757	.00720
11	.01309	.01227	.01153	.01086	.01024	.00968	.00917	.00870	.00827	.00787
12	.01413	.01327	.01249	.01178	.01113	.01054	.00999	.00950	.00904	.00862
13	.01523	.01432	.01350	.01275	.01206	.01144	.01086	.01034	.00985	.00940
14	.01634	.01539	.01452	.01373	.01301	.01235	.01174	.01118	.01067	.01020
15	.01743	.01643	.01552	.01469	.01393	.01323	.01259	.01200	.01146	.01096
16	.01849	.01744	.01648	.01561	.01480	.01407	.01339	.01277	.01220	.01167
17	.01953	.01843	.01742	.01650	.01565	.01488	.01416	.01351	.01290	.01235
18	.02056	.01940	.01834	.01737	.01648	.01566	.01491	.01422	.01358	.01299
19	.02160	.02038	.01927	.01824	.01730	.01644	.01565	.01492	.01424	.01362
20	.02270	.02141	.02024	.01916	.01817	.01726	.01642	.01565	.01494	.01428
21	.02382	.02247	.02124	.02010	.01906	.01810	.01721	.01640	.01565	.01495
22	.02500	.02358	.02228	.02108	.01998	.01897	.01803	.01717	.01638	.01564
23	.02625	.02476	.02339	.02213	.02097	.01990	.01891	.01800	.01716	.01638
24	.02761	.02604	.02460	.02327	.02205	.02092	.01988	.01891	.01802	.01719
25	.02912	.02747	.02595	.02455	.02326	.02206	.02096	.01994	.01900	.01812
26	.03078	.02904	.02744	.02597	.02461	.02335	.02218	.02110	.02010	.01917
27	.03261	.03079	.02910	.02755	.02611	.02478	.02355	.02241	.02135	.02037
28	.03462	.03270	.03093	.02929	.02778	.02637	.02507	.02387	.02274	.02170
29	.03678	.03477	.03291	.03118	.02959	.02811	.02673	.02546	.02427	.02316
30	.03910	.03699	.03503	.03322	.03154	.02997	.02852	.02717	.02592	.02475
31	.04159	.03937	.03731	.03541	.03364	.03199	.03046	.02903	.02770	.02646
32	.04425	.04192	.03976	.03776	.03589	.03416	.03254	.03104	.02963	.02832
33	.04710	.04466	.04239	.04029	.03832	.03650	.03479	.03320	.03172	.03033
34	.05011	.04756	.04518	.04297	.04090	.03898	.03718	.03551	.03394	.03247

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
35	.05331	.05064	.04815	.04582	.04366	.04163	.03974	.03798	.03632	.03477
36	.05671	.05391	.05130	.04887	.04659	.04446	.04247	.04061	.03887	.03723
37	.06032	.05739	.05466	.05210	.04972	.04748	.04539	.04343	.04159	.03986
38	.06415	.06109	.05823	.05556	.05305	.05070	.04850	.04644	.04450	.04268
39	.06819	.06500	.06201	.05921	.05658	.05412	.05181	.04964	.04760	.04568
40	.07246	.06913	.06601	.06308	.06033	.05774	.05532	.05304	.05089	.04887
41	.07697	.07349	.07023	.06717	.06429	.06158	.05904	.05664	.05439	.05226
42	.08171	.07809	.07469	.07149	.06848	.06564	.06298	.06046	.05809	.05585
43	.08674	.08297	.07942	.07608	.07293	.06997	.06717	.06453	.06204	.05969
44	.09203	.08810	.08441	.08092	.07764	.07454	.07161	.06885	.06624	.06377
45	.09760	.09352	.08967	.08604	.08261	.07938	.07632	.07342	.07068	.06809
46	.10348	.09925	.09524	.09146	.08789	.08451	.08131	.07828	.07542	.07270
47	.10967	.10527	.10111	.09717	.09345	.08992	.08659	.08342	.08042	.07757
48	.11618	.11161	.10730	.10321	.09933	.09566	.09217	.08887	.08573	.08275
49	.12304	.11831	.11383	.10958	.10555	.10173	.09810	.09465	.09137	.08825
50	.13029	.12540	.12076	.11635	.11216	.10818	.10440	.10081	.09739	.09413
51	.13795	.13289	.12808	.12351	.11917	.11504	.11110	.10736	.10379	.10040
52	.14604	.14081	.13584	.13111	.12661	.12232	.11823	.11434	.11062	.10708
53	.15456	.14917	.14404	.13914	.13448	.13004	.12580	.12175	.11789	.11420
54	.16352	.15796	.15266	.14761	.14279	.13819	.13379	.12959	.12558	.12175
55	.17289	.16717	.16171	.15650	.15152	.14676	.14221	.13786	.13370	.12971
56	.18262	.17674	.17113	.16576	.16062	.15570	.15100	.14650	.14218	.13805
57	.19273	.18669	.18092	.17539	.17010	.16503	.16017	.15552	.15105	.14677
58	.20319	.19700	.19107	.18539	.17994	.17472	.16971	.16490	.16029	.15586
59	.21404	.20770	.20162	.19579	.19019	.18481	.17965	.17470	.16993	.16535
60	.22532	.21884	.21261	.20663	.20088	.19536	.19005	.18494	.18003	.17530
61	.23702	.23040	.22403	.21790	.21201	.20634	.20089	.19564	.19058	.18571
62	.24911	.24235	.23584	.22958	.22355	.21774	.21214	.20674	.20154	.19653
63	.26157	.25468	.24805	.24165	.23548	.22954	.22380	.21827	.21293	.20777
64	.27442	.26742	.26065	.25413	.24783	.24175	.23588	.23021	.22474	.21944
65	.28768	.28056	.27368	.26703	.26061	.25441	.24841	.24261	.23700	.23158
66	.30156	.29433	.28735	.28059	.27405	.26773	.26161	.25569	.24995	.24440
67	.31601	.30870	.30161	.29476	.28812	.28169	.27545	.26942	.26357	.25790
68	.33100	.32360	.31643	.30949	.30275	.29622	.28989	.28375	.27779	.27201
69	.34646	.33900	.33177	.32474	.31793	.31131	.30489	.29865	.29259	.28671
70	.36239	.35488	.34758	.34049	.33361	.32692	.32041	.31409	.30795	.30197

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
71	.37880	.37125	.36391	.35677	.34983	.34308	.33651	.33011	.32389	.31784
72	.39566	.38809	.38073	.37355	.36657	.35977	.35315	.34670	.34041	.33429
73	.41291	.40534	.39796	.39077	.38376	.37693	.37027	.36377	.35744	.35126
74	.43046	.42290	.41552	.40833	.40131	.39446	.38778	.38125	.37489	.36867
75	.44821	.44068	.43332	.42614	.41913	.41227	.40558	.39904	.39266	.38641
76	.46611	.45862	.45130	.44415	.43715	.43031	.42363	.41709	.41069	.40444
77	.48414	.47671	.46944	.46233	.45537	.44856	.44189	.43536	.42898	.42272
78	.50226	.49490	.48770	.48065	.47374	.46697	.46034	.45384	.44747	.44123
79	.52043	.51317	.50604	.49906	.49222	.48551	.47892	.47247	.46614	.45993
80	.53859	.53142	.52440	.51750	.51074	.50410	.49758	.49118	.48491	.47874
81	.55669	.54964	.54273	.53593	.52926	.52271	.51627	.50995	.50373	.49763
82	.57469	.56778	.56099	.55431	.54774	.54129	.53494	.52871	.52257	.51654
83	.59254	.58577	.57911	.57256	.56612	.55978	.55354	.54740	.54136	.53541
84	.61019	.60358	.59706	.59065	.58434	.57812	.57200	.56597	.56003	.55419
85	.62759	.62114	.61479	.60853	.60236	.59628	.59028	.58438	.57856	.57282
86	.64470	.63843	.63224	.62614	.62012	.61419	.60833	.60256	.59687	.59125
87	.66146	.65537	.64936	.64342	.63757	.63179	.62608	.62045	.61489	.60941
88	.67786	.67196	.66613	.66037	.65469	.64907	.64352	.63804	.63263	.62728
89	.69384	.68813	.68249	.67691	.67140	.66595	.66057	.65525	.64999	.64479
90	.70936	.70385	.69840	.69301	.68768	.68241	.67719	.67204	.66693	.66189
91	.72440	.71909	.71384	.70864	.70349	.69840	.69336	.68837	.68344	.67855
92	.73894	.73383	.72878	.72377	.71881	.71390	.70904	.70422	.69945	.69473
93	.75292	.74801	.74316	.73834	.73357	.72885	.72416	.71952	.71492	.71037
94	.76636	.76166	.75700	.75238	.74780	.74326	.73876	.73429	.72986	.72547
95	.77926	.77476	.77030	.76587	.76148	.75712	.75280	.74851	.74426	.74004
96	.79155	.78725	.78298	.77874	.77453	.77036	.76622	.76210	.75802	.75397
97	.80325	.79915	.79507	.79101	.78699	.78300	.77903	.77509	.77117	.76729
98	.81440	.81048	.80659	.80272	.79887	.79505	.79126	.78749	.78375	.78002
99	.82502	.82128	.81757	.81388	.81021	.80656	.80294	.79934	.79576	.79220
100	.83497	.83141	.82788	.82436	.82086	.81738	.81392	.81048	.80706	.80365
101	.84451	.84112	.83776	.83441	.83107	.82776	.82446	.82117	.81791	.81466
102	.85337	.85014	.84693	.84374	.84056	.83740	.83425	.83112	.82800	.82490
103	.86223	.85918	.85613	.85310	.85008	.84708	.84409	.84111	.83814	.83519
104	.87040	.86749	.86460	.86172	.85885	.85599	.85314	.85030	.84748	.84466
105	.87844	.87568	.87294	.87020	.86748	.86476	.86205	.85935	.85666	.85398
106	.88865	.88609	.88354	.88100	.87846	.87594	.87341	.87090	.86839	.86590
107	.90030	.89797	.89565	.89333	.89102	.88871	.88641	.88411	.88181	.87952
108	.91968	.91776	.91585	.91394	.91203	.91012	.90821	.90630	.90440	.90250
109	.95900	.95800	.95700	.95600	.95500	.95400	.95300	.95200	.95100	.95000

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
0	.01025	.01008	.00992	.00977	.00963	.00950	.00938	.00927	.00917	.00907
1	.00410	.00392	.00376	.00361	.00347	.00334	.00322	.00310	.00300	.00290
2	.00404	.00385	.00367	.00351	.00336	.00322	.00310	.00298	.00287	.00276
3	.00415	.00394	.00376	.00359	.00343	.00328	.00314	.00301	.00290	.00279
4	.00435	.00414	.00394	.00375	.00358	.00342	.00328	.00314	.00302	.00290
5	.00463	.00439	.00418	.00398	.00380	.00363	.00348	.00333	.00319	.00307
6	.00496	.00471	.00448	.00427	.00408	.00390	.00373	.00357	.00343	.00329
7	.00533	.00507	.00483	.00460	.00439	.00420	.00402	.00385	.00369	.00355
8	.00577	.00549	.00523	.00499	.00476	.00456	.00436	.00418	.00402	.00386
9	.00627	.00598	.00570	.00544	.00520	.00498	.00478	.00458	.00440	.00423
10	.00685	.00653	.00624	.00596	.00571	.00547	.00525	.00505	.00485	.00467
11	.00750	.00716	.00685	.00656	.00629	.00603	.00580	.00558	.00537	.00518
12	.00823	.00787	.00753	.00722	.00693	.00667	.00642	.00618	.00596	.00576
13	.00899	.00861	.00826	.00793	.00762	.00734	.00707	.00682	.00659	.00637
14	.00976	.00935	.00898	.00863	.00831	.00801	.00772	.00746	.00722	.00698
15	.01050	.01007	.00967	.00931	.00896	.00864	.00835	.00807	.00781	.00756
16	.01118	.01073	.01031	.00992	.00956	.00922	.00891	.00861	.00834	.00808
17	.01183	.01135	.01091	.01050	.01011	.00976	.00942	.00911	.00882	.00855
18	.01244	.01194	.01147	.01104	.01063	.01025	.00990	.00957	.00926	.00897
19	.01304	.01251	.01202	.01156	.01113	.01073	.01035	.01001	.00968	.00937
20	.01367	.01311	.01258	.01209	.01164	.01122	.01082	.01045	.01011	.00978
21	.01430	.01371	.01315	.01263	.01215	.01171	.01129	.01090	.01053	.01019
22	.01496	.01432	.01373	.01319	.01268	.01220	.01176	.01134	.01095	.01059
23	.01565	.01498	.01436	.01377	.01323	.01273	.01225	.01181	.01140	.01101
24	.01642	.01571	.01505	.01443	.01386	.01332	.01282	.01235	.01191	.01149
25	.01731	.01655	.01585	.01519	.01458	.01401	.01347	.01297	.01250	.01206
26	.01831	.01751	.01676	.01606	.01541	.01480	.01423	.01370	.01320	.01273
27	.01945	.01860	.01780	.01706	.01637	.01572	.01511	.01454	.01401	.01351
28	.02073	.01982	.01898	.01819	.01745	.01676	.01611	.01551	.01494	.01440
29	.02213	.02117	.02027	.01943	.01865	.01791	.01722	.01658	.01597	.01540
30	.02365	.02263	.02168	.02079	.01995	.01917	.01844	.01775	.01710	.01649
31	.02531	.02422	.02321	.02226	.02138	.02054	.01976	.01902	.01833	.01768
32	.02709	.02595	.02487	.02387	.02292	.02204	.02120	.02042	.01968	.01899
33	.02903	.02782	.02668	.02561	.02461	.02366	.02278	.02194	.02116	.02041
34	.03110	.02981	.02860	.02747	.02640	.02540	.02446	.02357	.02273	.02194

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
35	.03332	.03195	.03067	.02947	.02834	.02728	.02627	.02533	.02444	.02359
36	.03569	.03425	.03290	.03162	.03042	.02929	.02823	.02722	.02627	.02537
37	.03824	.03671	.03528	.03393	.03266	.03146	.03032	.02925	.02824	.02729
38	.04097	.03936	.03784	.03641	.03506	.03379	.03259	.03145	.03037	.02936
39	.04387	.04217	.04057	.03905	.03763	.03628	.03500	.03380	.03265	.03157
40	.04696	.04517	.04347	.04187	.04036	.03893	.03758	.03630	.03509	.03394
41	.05025	.04836	.04657	.04488	.04328	.04177	.04034	.03898	.03769	.03647
42	.05374	.05174	.04986	.04807	.04638	.04478	.04326	.04183	.04046	.03917
43	.05747	.05537	.05338	.05150	.04971	.04802	.04641	.04489	.04344	.04207
44	.06143	.05922	.05712	.05514	.05325	.05147	.04977	.04816	.04663	.04517
45	.06564	.06331	.06111	.05901	.05703	.05514	.05335	.05164	.05002	.04848
46	.07012	.06768	.06536	.06315	.06106	.05907	.05718	.05538	.05366	.05203
47	.07487	.07231	.06987	.06755	.06535	.06325	.06125	.05935	.05754	.05581
48	.07992	.07723	.07467	.07223	.06991	.06770	.06560	.06359	.06168	.05985
49	.08529	.08247	.07978	.07722	.07479	.07246	.07024	.06813	.06611	.06418
50	.09103	.08808	.08526	.08258	.08002	.07757	.07524	.07301	.07088	.06885
51	.09716	.09407	.09112	.08831	.08562	.08306	.08060	.07826	.07601	.07387
52	.10370	.10047	.09739	.09445	.09163	.08894	.08637	.08390	.08154	.07928
53	.11068	.10731	.10409	.10101	.09806	.09524	.09254	.08996	.08748	.08510
54	.11808	.11457	.11121	.10800	.10492	.10197	.09914	.09642	.09382	.09133
55	.12590	.12225	.11875	.11540	.11218	.10910	.10614	.10330	.10057	.09795
56	.13409	.13029	.12665	.12316	.11981	.11659	.11350	.11053	.10768	.10493
57	.14266	.13872	.13494	.13130	.12781	.12446	.12123	.11813	.11515	.11228
58	.15160	.14751	.14359	.13981	.13618	.13269	.12933	.12609	.12298	.11998
59	.16095	.15672	.15264	.14873	.14495	.14132	.13783	.13446	.13121	.12808
60	.17076	.16638	.16216	.15810	.15419	.15042	.14678	.14328	.13990	.13663
61	.18101	.17649	.17213	.16793	.16388	.15997	.15619	.15255	.14904	.14564
62	.19169	.18703	.18253	.17818	.17399	.16994	.16603	.16225	.15860	.15507
63	.20279	.19799	.19335	.18886	.18453	.18034	.17629	.17238	.16859	.16493
64	.21433	.20939	.20461	.19998	.19551	.19119	.18700	.18295	.17903	.17523
65	.22633	.22125	.21633	.21158	.20697	.20251	.19819	.19400	.18994	.18601
66	.23903	.23382	.22877	.22388	.21914	.21455	.21010	.20578	.20159	.19752
67	.25240	.24707	.24190	.23688	.23202	.22730	.22271	.21827	.21395	.20975
68	.26640	.26095	.25566	.25053	.24554	.24070	.23600	.23143	.22698	.22267
69	.28099	.27544	.27004	.26480	.25970	.25474	.24992	.24523	.24067	.23623
70	.29616	.29051	.28501	.27966	.27446	.26939	.26446	.25966	.25499	.25044

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
71	.31194	.30620	.30062	.29517	.28987	.28471	.27968	.27478	.27000	.26534
72	.32833	.32251	.31684	.31132	.30593	.30068	.29556	.29057	.28569	.28094
73	.34524	.33936	.33363	.32804	.32258	.31725	.31205	.30697	.30201	.29717
74	.36260	.35667	.35089	.34523	.33971	.33432	.32905	.32390	.31887	.31395
75	.38031	.37435	.36852	.36282	.35725	.35180	.34647	.34126	.33617	.33118
76	.39832	.39233	.38647	.38074	.37513	.36964	.36427	.35901	.35386	.34882
77	.41660	.41060	.40473	.39898	.39335	.38783	.38242	.37713	.37194	.36685
78	.43512	.42913	.42326	.41750	.41186	.40632	.40090	.39558	.39036	.38524
79	.45384	.44787	.44201	.43626	.43062	.42509	.41966	.41432	.40909	.40396
80	.47269	.46675	.46092	.45519	.44957	.44404	.43862	.43329	.42806	.42291
81	.49163	.48574	.47994	.47425	.46866	.46316	.45775	.45244	.44722	.44208
82	.51061	.50478	.49904	.49340	.48784	.48238	.47701	.47173	.46653	.46141
83	.52956	.52380	.51813	.51255	.50705	.50165	.49632	.49108	.48592	.48083
84	.54843	.54275	.53716	.53166	.52623	.52089	.51562	.51044	.50532	.50029
85	.56716	.56159	.55609	.55067	.54533	.54006	.53487	.52975	.52470	.51972
86	.58571	.58024	.57485	.56953	.56428	.55910	.55399	.54894	.54397	.53906
87	.60399	.59864	.59337	.58815	.58301	.57793	.57291	.56795	.56306	.55823
88	.62200	.61678	.61162	.60653	.60150	.59653	.59161	.58676	.58196	.57722
89	.63965	.63457	.62954	.62458	.61967	.61481	.61001	.60526	.60057	.59593
90	.65690	.65196	.64707	.64224	.63746	.63273	.62805	.62342	.61884	.61431
91	.67371	.66892	.66418	.65949	.65485	.65025	.64570	.64119	.63673	.63231
92	.69005	.68542	.68083	.67628	.67178	.66732	.66290	.65852	.65419	.64989
93	.70585	.70137	.69694	.69254	.68819	.68387	.67959	.67534	.67114	.66697
94	.72112	.71681	.71253	.70828	.70407	.69990	.69576	.69166	.68759	.68355
95	.73585	.73170	.72758	.72349	.71943	.71541	.71141	.70745	.70352	.69961
96	.74995	.74595	.74199	.73806	.73415	.73027	.72642	.72260	.71881	.71505
97	.76343	.75960	.75579	.75201	.74826	.74453	.74083	.73715	.73350	.72987
98	.77633	.77265	.76900	.76538	.76177	.75819	.75463	.75110	.74759	.74410
99	.78866	.78514	.78165	.77817	.77472	.77129	.76787	.76448	.76111	.75775
100	.80027	.79690	.79356	.79023	.78692	.78363	.78036	.77710	.77386	.77065
101	.81143	.80821	.80502	.80183	.79867	.79552	.79239	.78927	.78617	.78308
102	.82181	.81874	.81568	.81264	.80961	.80659	.80359	.80060	.79763	.79467
103	.83225	.82933	.82641	.82351	.82062	.81774	.81488	.81203	.80919	.80636
104	.84186	.83907	.83629	.83351	.83076	.82801	.82527	.82254	.81982	.81712
105	.85131	.84865	.84600	.84336	.84072	.83810	.83548	.83288	.83028	.82769
106	.86340	.86092	.85844	.85597	.85351	.85105	.84860	.84616	.84372	.84130
107	.87724	.87496	.87268	.87041	.86815	.86589	.86363	.86138	.85914	.85690
108	.90060	.89870	.89681	.89492	.89303	.89114	.88925	.88736	.88548	.88360
109	.94900	.94800	.94700	.94600	.94500	.94400	.94300	.94200	.94100	.94000

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
0	.00898	.00889	.00881	.00873	.00866	.00859	.00853	.00846	.00840	.00835
1	.00281	.00273	.00265	.00257	.00250	.00244	.00237	.00232	.00226	.00221
2	.00267	.00258	.00249	.00241	.00234	.00227	.00220	.00214	.00208	.00202
3	.00268	.00259	.00249	.00241	.00233	.00225	.00218	.00212	.00205	.00199
4	.00279	.00268	.00258	.00249	.00241	.00233	.00225	.00218	.00211	.00205
5	.00295	.00284	.00273	.00263	.00254	.00245	.00237	.00229	.00222	.00215
6	.00316	.00304	.00293	.00283	.00273	.00263	.00254	.00246	.00238	.00230
7	.00341	.00328	.00316	.00305	.00294	.00284	.00274	.00265	.00256	.00248
8	.00371	.00357	.00344	.00332	.00320	.00310	.00299	.00289	.00280	.00271
9	.00408	.00393	.00379	.00366	.00353	.00341	.00330	.00320	.00310	.00300
10	.00450	.00434	.00419	.00405	.00392	.00379	.00367	.00356	.00345	.00335
11	.00500	.00483	.00467	.00452	.00438	.00424	.00411	.00399	.00387	.00376
12	.00557	.00538	.00521	.00505	.00490	.00476	.00462	.00449	.00436	.00425
13	.00617	.00597	.00579	.00562	.00546	.00531	.00516	.00502	.00489	.00477
14	.00677	.00656	.00637	.00619	.00602	.00585	.00570	.00555	.00541	.00528
15	.00733	.00712	.00691	.00672	.00654	.00636	.00620	.00605	.00590	.00576
16	.00784	.00761	.00739	.00719	.00700	.00681	.00664	.00648	.00632	.00618
17	.00829	.00805	.00782	.00761	.00741	.00721	.00703	.00686	.00670	.00654
18	.00870	.00845	.00821	.00798	.00777	.00756	.00737	.00719	.00702	.00685
19	.00909	.00882	.00856	.00832	.00810	.00788	.00768	.00749	.00731	.00713
20	.00948	.00919	.00892	.00867	.00843	.00821	.00799	.00779	.00760	.00741
21	.00986	.00956	.00927	.00901	.00875	.00851	.00829	.00807	.00787	.00767
22	.01024	.00992	.00962	.00933	.00906	.00881	.00857	.00834	.00813	.00792
23	.01065	.01030	.00998	.00968	.00939	.00912	.00887	.00862	.00839	.00818
24	.01110	.01074	.01040	.01007	.00977	.00948	.00921	.00895	.00870	.00847
25	.01165	.01126	.01089	.01055	.01022	.00991	.00962	.00934	.00908	.00884
26	.01228	.01187	.01148	.01111	.01076	.01043	.01012	.00982	.00955	.00928
27	.01303	.01259	.01217	.01178	.01140	.01105	.01072	.01040	.01010	.00982
28	.01390	.01342	.01297	.01255	.01215	.01178	.01142	.01108	.01076	.01046
29	.01486	.01435	.01387	.01342	.01299	.01259	.01221	.01185	.01150	.01117
30	.01591	.01537	.01486	.01437	.01392	.01348	.01307	.01269	.01232	.01197
31	.01707	.01649	.01594	.01542	.01493	.01447	.01403	.01361	.01322	.01284
32	.01833	.01771	.01713	.01657	.01605	.01555	.01508	.01464	.01421	.01381
33	.01971	.01905	.01843	.01784	.01728	.01674	.01624	.01576	.01531	.01487
34	.02119	.02049	.01982	.01919	.01859	.01802	.01748	.01697	.01648	.01602

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

Adjusted Payout Rate

AGE	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
35	.02280	.02204	.02133	.02065	.02001	.01940	.01883	.01828	.01775	.01726
36	.02452	.02372	.02296	.02224	.02155	.02090	.02028	.01969	.01913	.01860
37	.02638	.02553	.02471	.02394	.02321	.02252	.02185	.02123	.02063	.02006
38	.02839	.02748	.02661	.02579	.02501	.02427	.02356	.02289	.02225	.02164
39	.03055	.02957	.02865	.02777	.02694	.02615	.02539	.02467	.02399	.02333
40	.03285	.03181	.03083	.02990	.02901	.02816	.02735	.02658	.02585	.02515
41	.03531	.03421	.03316	.03217	.03122	.03032	.02946	.02863	.02785	.02710
42	.03793	.03676	.03565	.03459	.03358	.03262	.03170	.03082	.02999	.02919
43	.04076	.03952	.03833	.03721	.03613	.03510	.03413	.03319	.03230	.03144
44	.04378	.04246	.04120	.04000	.03886	.03777	.03672	.03573	.03477	.03386
45	.04701	.04561	.04427	.04299	.04178	.04062	.03950	.03844	.03743	.03645
46	.05047	.04898	.04757	.04621	.04492	.04368	.04250	.04137	.04029	.03925
47	.05416	.05258	.05108	.04964	.04827	.04696	.04570	.04449	.04334	.04224
48	.05810	.05644	.05484	.05332	.05186	.05047	.04913	.04785	.04662	.04545
49	.06233	.06057	.05888	.05727	.05572	.05424	.05282	.05146	.05016	.04890
50	.06690	.06503	.06325	.06154	.05990	.05833	.05683	.05538	.05399	.05266
51	.07181	.06984	.06796	.06615	.06442	.06275	.06116	.05962	.05815	.05673
52	.07712	.07504	.07305	.07114	.06931	.06755	.06585	.06423	.06267	.06116
53	.08282	.08063	.07853	.07652	.07458	.07272	.07093	.06921	.06756	.06596
54	.08893	.08663	.08442	.08229	.08025	.07829	.07640	.07458	.07283	.07114
55	.09544	.09302	.09070	.08846	.08631	.08424	.08224	.08032	.07847	.07669
56	.10230	.09976	.09732	.09497	.09270	.09052	.08842	.08639	.08444	.08256
57	.10952	.10686	.10430	.10183	.09945	.09716	.09495	.09281	.09075	.08877
58	.11709	.11431	.11162	.10904	.10654	.10413	.10181	.09956	.09739	.09530
59	.12506	.12215	.11934	.11663	.11402	.11149	.10905	.10669	.10441	.10221
60	.13349	.13045	.12751	.12468	.12194	.11929	.11674	.11426	.11187	.10955
61	.14236	.13919	.13613	.13317	.13031	.12754	.12486	.12227	.11976	.11733
62	.15166	.14836	.14517	.14208	.13909	.13620	.13340	.13069	.12806	.12551
63	.16138	.15795	.15463	.15141	.14830	.14528	.14235	.13952	.13677	.13410
64	.17155	.16799	.16453	.16119	.15794	.15480	.15175	.14879	.14592	.14313
65	.18220	.17850	.17492	.17144	.16806	.16479	.16161	.15853	.15553	.15262
66	.19358	.18975	.18604	.18243	.17893	.17552	.17222	.16901	.16589	.16285
67	.20568	.20173	.19788	.19415	.19052	.18699	.18356	.18022	.17698	.17382
68	.21847	.21439	.21042	.20656	.20280	.19915	.19560	.19213	.18877	.18549
69	.23191	.22771	.22362	.21964	.21577	.21199	.20831	.20473	.20124	.19784
70	.24601	.24169	.23748	.23339	.22939	.22550	.22171	.21801	.21440	.21088

Table U(1) - Unitrust Single Life Remainder Factors
Based on Life Table 2000CM
Applicable On or After May 1, 2009

	Adjusted Payout Rate									
AGE	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
71	.26080	.25638	.25206	.24785	.24375	.23974	.23584	.23202	.22830	.22467
72	.27630	.27178	.26736	.26305	.25884	.25473	.25071	.24679	.24296	.23922
73	.29244	.28782	.28331	.27890	.27460	.27039	.26628	.26226	.25833	.25449
74	.30914	.30444	.29984	.29535	.29096	.28666	.28245	.27834	.27432	.27038
75	.32630	.32153	.31686	.31229	.30782	.30344	.29915	.29496	.29085	.28682
76	.34389	.33905	.33432	.32968	.32514	.32069	.31633	.31205	.30787	.30376
77	.36187	.35698	.35220	.34750	.34290	.33839	.33396	.32963	.32537	.32120
78	.38022	.37530	.37047	.36573	.36108	.35652	.35204	.34765	.34333	.33910
79	.39891	.39396	.38910	.38433	.37965	.37504	.37053	.36609	.36173	.35744
80	.41786	.41290	.40802	.40323	.39852	.39389	.38934	.38486	.38047	.37615
81	.43703	.43207	.42719	.42238	.41766	.41302	.40845	.40395	.39953	.39518
82	.45638	.45143	.44655	.44175	.43703	.43238	.42781	.42330	.41887	.41450
83	.47583	.47090	.46604	.46126	.45655	.45191	.44734	.44284	.43840	.43403
84	.49532	.49043	.48561	.48085	.47617	.47155	.46700	.46251	.45808	.45372
85	.51480	.50996	.50518	.50047	.49582	.49124	.48671	.48225	.47785	.47351
86	.53421	.52943	.52470	.52004	.51544	.51090	.50642	.50200	.49763	.49332
87	.55346	.54875	.54409	.53950	.53496	.53047	.52604	.52167	.51734	.51307
88	.57254	.56791	.56333	.55881	.55434	.54992	.54555	.54124	.53697	.53275
89	.59134	.58680	.58231	.57788	.57349	.56914	.56485	.56060	.55640	.55225
90	.60982	.60538	.60099	.59665	.59234	.58809	.58388	.57971	.57558	.57150
91	.62794	.62361	.61932	.61508	.61087	.60671	.60259	.59851	.59447	.59046
92	.64564	.64142	.63725	.63311	.62901	.62495	.62093	.61694	.61299	.60907
93	.66284	.65874	.65468	.65066	.64667	.64272	.63880	.63491	.63106	.62724
94	.67955	.67558	.67164	.66773	.66386	.66002	.65621	.65243	.64868	.64496
95	.69574	.69190	.68809	.68431	.68055	.67683	.67313	.66946	.66582	.66221
96	.71131	.70760	.70391	.70025	.69662	.69302	.68944	.68588	.68235	.67885
97	.72626	.72268	.71913	.71560	.71209	.70861	.70515	.70171	.69829	.69490
98	.74063	.73718	.73376	.73035	.72697	.72361	.72027	.71695	.71365	.71037
99	.75442	.75111	.74781	.74454	.74128	.73804	.73483	.73163	.72844	.72528
100	.76744	.76426	.76109	.75794	.75481	.75169	.74860	.74551	.74245	.73940
101	.78001	.77695	.77392	.77089	.76788	.76489	.76191	.75895	.75600	.75306
102	.79172	.78879	.78587	.78297	.78008	.77720	.77434	.77149	.76865	.76582
103	.80354	.80074	.79795	.79517	.79240	.78965	.78690	.78417	.78145	.77874
104	.81442	.81174	.80906	.80640	.80374	.80110	.79847	.79584	.79323	.79063
105	.82511	.82254	.81998	.81742	.81488	.81234	.80982	.80730	.80479	.80229
106	.83887	.83646	.83405	.83165	.82926	.82687	.82449	.82212	.81975	.81739
107	.85466	.85243	.85020	.84798	.84576	.84355	.84134	.83914	.83694	.83474
108	.88172	.87984	.87797	.87610	.87423	.87236	.87049	.86862	.86676	.86490
109	.93900	.93800	.93700	.93600	.93500	.93400	.93300	.93200	.93100	.93000

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(f) *Effective/applicability date.* This section applies on and after May 1, 2009.

§ 1.664–4T [Removed]

■ **Par. 8.** Section 1.664–4T is removed.

■ **Par. 9.** Section 1.7520–1 is amended by revising the section heading and revising paragraphs (a)(1), (a)(2), (b)(2), (c)(1), (c)(2) and (d) to read as follows:

§ 1.7520–1 Valuation of annuities, unitrust interests, interests for life or terms of years, and remainder or reversionary interests.

(a) *General actuarial valuations.* (1) Except as otherwise provided in this section and in § 1.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), in the case of certain transactions after April 30, 1989, subject to income tax, the fair market value of annuities, interests for life or for a term of years (including unitrust interests), remainders, and reversions is their present value determined under this

section. See § 20.2031–7(d) of this chapter (and, for periods prior to May 1, 2009, § 20.2031–7A) for the computation of the value of annuities, unitrust interests, life estates, terms for years, remainders, and reversions, other than interests described in paragraphs (a)(2) and (a)(3) of this section.

(2) For a transfer to a pooled income fund, see § 1.642(c)–6(e) (or, for periods prior to May 1, 2009, § 1.642(c)–6A) with respect to the valuation of the remainder interest.

* * * * *

(b) * * *

(2) *Mortality component.* The mortality component reflects the mortality data most recently available from the United States census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised and the revised mortality component tables will be published in the regulations at that time. For transactions with valuation dates on or after May 1, 2009, the mortality component table (Table 2000CM) is contained in § 20.2031–7(d)(7) of this chapter. See § 20.2031–7A for mortality component tables applicable to transactions for which the valuation date falls before May 1, 2009.

(c) * * *

(1) *Regulation sections containing tables with interest rates between 0.2 and 14 percent for valuation dates on or after May 1, 2009.* Section 1.642(c)–6(e)(6) contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in § 1.642(c)–5. See § 1.642(c)–6A for actuarial factors for one life applicable to valuation dates before May 1, 2009. Section 1.664–4(e)(6) contains Table F (payout factors) and Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years). Section 1.664–4(e)(7) contains Table U(1) (unitrust single life remainder factors). These tables are used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in § 1.664–3. See § 1.664–4A for unitrust single life remainder factors applicable to valuation dates before May 1, 2009. Section 20.2031–7(d)(6) of this chapter contains Table B (actuarial factors used in determining the present value of an interest for a term of years), Table J (term certain annuity beginning-of-interval adjustment factors), and Table K (annuity end-of-interval adjustment factors). Section 20.2031–7(d)(7) contains Table S (single life remainder factors), and Table 2000CM (mortality components). These tables are used in determining the present value of annuities, life estates, remainders, and reversions. See § 20.2031–7A for single life remainder factors for one life and mortality components applicable to valuation dates before May 1, 2009.

(2) *Internal Revenue Service publications containing tables with interest rates between 0.2 and 22 percent for valuation dates on or after May 1, 2009.* The following documents are available, at no charge, electronically via the IRS Internet site at *http://www.irs.gov:*

(i) Internal Revenue Service Publication 1457, ''Actuarial Valuations Version 3A'' (2009). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors must also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 and a pooled income fund as defined in § 1.642(c)–5.

(ii) Internal Revenue Service Publication 1458, ''Actuarial Valuations Version 3B'' (2009). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3.

(iii) Internal Revenue Service Publication 1459, ''Actuarial Valuations Version 3C'' (2009). This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12.

(d) *Effective/applicability date.* This section applies on and after May 1, 2009.

§ 1.7520–1T [Removed]

■ **Par. 10.** Section 1.7520–1T is removed.

■ **Par. 10A.** For each section listed in the table below, remove the language in the ''Remove'' column and add in its place the language in the ''Add'' column as set forth below:

Section	Remove	Add
§ 1.170A–12(e)(2), following the formula	§ 20.2031–7T	§ 20.2031–7.
§ 1.642(c)–6A(f)(3)(ii), last sentence	§ 1.642(c)–6T(e)(3)(ii)	§ 1.642(c)–6(e)(3)(ii).
§ 1.642(c)–6A(f)(4)	§ 1.642(c)–6T(e)(4)	§ 1.642(c)–6(e)(4).
§ 1.642(c)–6A(f)(5), last sentence	§ 1.642(c)–6T(e)(5)	§ 1.642(c)–6(e)(5).
§ 1.664–1(a)(6), introductory text	§§ 1.664–4T(e)	§§ 1.664–4(e).
§ 1.664–4(e)(6), second sentence	§ 1.664–4T(e)(5)	Paragraph (e)(5) of this section.
§ 1.664–4A(f)(5), fourth sentence	§ 1.664–4T(e)(5)	§ 1.664–4(e)(5).
§ 1.664–4A(f)(5), last sentence	§ 1.664–4T(e)(5)	§ 1.664–4(e)(5).

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Par. 11.** The authority citation for part 20 is amended by removing entries for 20.2031–7T and 20.7520–1T to read as follows:

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

■ **Par. 12.** Section 20.2031–0 is amended by removing the entry for § 20.2031–7T from the table.

■ **Par. 13.** Section 20.2031–7 is amended by revising paragraphs (c), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7), and (e) to read as follows:

§ 20.2031–7 Valuation of annuities, interests for life or term of years, and remainder or reversionary interests.

* * * * *

(c) *Actuarial valuations.* The present value of annuities, life estates, terms of years, remainders, and reversions for estates of decedents for which the valuation date of the gross estate is on or after May 1, 2009, is determined under paragraph (d) of this section. The present value of annuities, life estates, terms of years, remainders, and reversions for estates of decedents for which the valuation date of the gross estate is before May 1, 2009, is determined under the following sections:

Valuation date		Applicable regulations
After	Before	
—	01–01–52	20.2031–7A(a).
12–31–51	01–01–71	20.2031–7A(b).
12–31–70	12–01–83	20.2031–7A(c).
11–30–83	05–01–89	20.2031–7A(d).
04–30–89	05–01–99	20.2031–7A(e).
04–30–99	05–01–09	20.2031–7A(f).

(d) *Actuarial valuations on or after May 1, 2009*—(1) *In general.* Except as otherwise provided in paragraph (b) of this section and § 20.7520–3(b) (pertaining to certain limitations on the use of prescribed tables), if the valuation date for the gross estate of the decedent is on or after May 1, 2009, the fair market value of annuities, life estates, terms of years, remainders, and reversionary interests is the present value determined by use of standard or special section 7520 actuarial factors. These factors are derived by using the appropriate section 7520 interest rate and, if applicable, the mortality component for the valuation date of the interest that is being valued. For purposes of the computations described in this section, the age of an individual is the age of that individual at the individual's nearest birthday. See §§ 20.7520–1 through 20.7520–4.

(2) *Specific interests*—(i) *Charitable remainder trusts.* The fair market value of a remainder interest in a pooled income fund, as defined in § 1.642(c)–5 of this chapter, is its value determined under § 1.642(c)–6(e). The fair market value of a remainder interest in a charitable remainder annuity trust, as defined in § 1.664–2(a), is the present value determined under § 1.664–2(c). The fair market value of a remainder interest in a charitable remainder unitrust, as defined in § 1.664–3, is its present value determined under § 1.664–4(e). The fair market value of a life interest or term of years in a charitable remainder unitrust is the fair market value of the property as of the date of valuation less the fair market value of the remainder interest on that date determined under § 1.664–4(e)(4) and (5).

(ii) *Ordinary remainder and reversionary interests.* If the interest to be valued is to take effect after a definite number of years or after the death of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate remainder interest actuarial factor (that corresponds to the applicable section 7520 interest rate and remainder interest period) in Table B (for a term certain) or in Table S (for one measuring life), as the case may be. Table B is contained in paragraph (d)(6) of this section and Table S (for one measuring life when the valuation date is on or after May 1, 2009) is contained in paragraph (d)(7) of this section and in Internal Revenue Service Publication 1457. See § 20.2031–7A containing Table S for valuation of interests before May 1, 2009. For information about obtaining actuarial factors for other types of remainder interests, see paragraph (d)(4) of this section.

(iii) *Ordinary term-of-years and life interests.* If the interest to be valued is the right of a person to receive the income of certain property, or to use certain nonincome-producing property, for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate term-of-years or life interest actuarial factor (that corresponds to the applicable section 7520 interest rate and term-of-years or life interest period). Internal Revenue Service Publication 1457 includes actuarial factors for a remainder interest after a term of years in Table B and after the life of one individual in Table S (for one measuring life when the valuation date is on or after May 1, 2009). However, term-of-years and life interest actuarial factors are not included in Table B in paragraph (d)(6) of this section or Table S in paragraph (d)(7) of this section (or in § 20.2031–7A). If Internal Revenue Service Publication 1457 (or any other reliable source of term-of-years and life interest actuarial factors) is not conveniently available, an actuarial factor for the interest may be derived mathematically. This actuarial factor may be derived by subtracting the correlative remainder factor (that corresponds to the applicable section 7520 interest rate and the term of years or the life) in Table B (for a term of years) in paragraph (d)(6) of this section or in Table S (for the life of one individual) in paragraph (d)(7) of this section, as the case may be, from 1.000000. For information about obtaining actuarial factors for other types of term-of-years and life interests, see paragraph (d)(4) of this section.

(iv) *Annuities.* (A) If the interest to be valued is the right of a person to receive an annuity that is payable at the end of each year for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the aggregate amount payable annually by the appropriate annuity actuarial factor (that corresponds to the applicable section 7520 interest rate and annuity period). Internal Revenue Publication 1457 includes actuarial factors for a remainder interest in Table B (after an annuity payable for a term of years) and in Table S (after an annuity payable for the life of one individual when the valuation date is on or after May 1, 2009). However, annuity actuarial factors are not included in Table B in paragraph (d)(6) of this section or Table S in paragraph (d)(7) of this section (or in § 20.2031–7A). If Internal Revenue Service Publication 1457 (or any other reliable source of annuity actuarial factors) is not conveniently available, a required annuity factor for a term of years or for one life may be mathematically derived. This annuity factor may be derived by subtracting the applicable remainder factor (that corresponds to the applicable section 7520 interest rate and annuity period) in Table B (in the case of a term-of-years annuity) in paragraph (d)(6) of this section or in Table S (in the case of a one-life annuity when the valuation date is on or after May 1, 2009) in paragraph (d)(7) of this section, as the case may be, from 1.000000 and then dividing the result by the applicable section 7520 interest rate expressed as a decimal number.

(B) If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods, the product obtained by multiplying the annuity factor by the aggregate amount payable annually is then multiplied by the applicable adjustment factor as contained in Table K in paragraph (d)(6) of this section for payments made at the end of the specified periods. The provisions of this paragraph (d)(2)(iv)(B) are illustrated by the following example:

Example. At the time of the decedent's death, the survivor/annuitant, age 72, is

entitled to receive an annuity of $15,000 a year for life payable in equal monthly installments at the end of each period. The section 7520 rate for the month in which the decedent died is 5.6 percent. Under Table S in paragraph (d)(7) of this section, the remainder factor at 5.6 percent for an individual aged 72 is .53243. By converting the remainder factor to an annuity factor, as described above, the annuity factor at 5.6 percent for an individual aged 72 is 8.3495 (1.000000 minus .53243, divided by .056). Under Table K in paragraph (d)(6) of this section, the adjustment factor under the column for payments made at the end of each monthly period at the rate of 5.6 percent is 1.0254. The aggregate annual amount, $15,000, is multiplied by the factor 8.3495 and the product is multiplied by 1.0254. The present value of the annuity at the date of the decedent's death is, therefore, $128,423.66 ($15,000 × 8.3495 × 1.0254).

(C) If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for a term of years, the value of the annuity is computed by multiplying the aggregate amount payable annually by the annuity factor described in paragraph (d)(2)(iv)(A) of this section, and the product so obtained is then multiplied by the adjustment factor in Table J in paragraph (d)(6) of this section at the appropriate interest rate component for payments made at the beginning of specified periods. If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for one or more lives, the value of the annuity is the sum of the first payment plus the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in this paragraph (d)(2)(iv).

(v) *Annuity and unitrust interests for a term of years or until the prior death of an individual.* See § 25.2512–5(d)(2)(v) of this chapter for examples explaining how to compute the present value of an annuity or unitrust interest that is payable until the earlier of the lapse of a specific number of years or the death of an individual.

(3) *Transitional rule.* (i) If a decedent dies on or after May 1, 2009, and if on May 1, 2009, the decedent was mentally incompetent so that the disposition of the decedent's property could not be changed, and the decedent dies without having regained competency to dispose of the decedent's property or dies within 90 days of the date on which the decedent first regains competency, the fair market value of annuities, life estates, terms for years, remainders, and reversions included in the gross estate of the decedent is their present value determined either under this section or under the corresponding section applicable at the time the decedent became mentally incompetent, at the option of the decedent's executor. For examples, see § 20.2031–7A(d).

(ii) If a decedent dies on or after May 1, 2009, and before July 1, 2009, the fair market value of annuities, life estates, remainders, and reversions based on one or more measuring lives included in the gross estate of the decedent is their present value determined under this section by use of the section 7520 interest rate for the month in which the valuation date occurs (see §§ 20.7520–1(b) and 20.7520–2(a)(2)) and the appropriate actuarial tables under either paragraph (d)(7) of this section or § 20.2031–7A(f)(4), at the option of the decedent's executor.

(iii) For purposes of paragraphs (d)(3)(i) and (d)(3)(ii) of this section, where the decedent's executor is given the option to use the appropriate actuarial tables under either paragraph (d)(7) of this section or § 20.2031–7A(f)(4), the decedent's executor must use the same actuarial table with respect to each individual transaction and with respect to all transfers occurring on the valuation date. For example, gift and income tax charitable deductions with respect to the same transfer must be determined based on the same tables, and all assets includible in the gross estate and/or estate tax deductions claimed must be valued based on the same tables.

(4) *Publications and actuarial computations by the Internal Revenue Service.* Many standard actuarial factors not included in paragraph (d)(6) or (d)(7) of this section are included in Internal Revenue Service Publication 1457, ''Actuarial Valuations Version 3A'' (2009). Publication 1457 also includes examples that illustrate how to compute many special factors for more unusual situations. This publication is available, at no charge, electronically via the Internal Revenue Service Internet site at *http://www.irs.gov.* If a special factor is required in the case of an actual decedent, the Internal Revenue Service may furnish the factor to the executor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts including a statement of the date of birth for each measuring life, the date of the decedent's death, any other applicable dates, and a copy of the will, trust, or other relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and must include payment of the required user fee.

(5) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Remainder payable at an individual's death. The decedent, or the decedent's estate, was entitled to receive certain property worth $50,000 upon the death of A, to whom the income was bequeathed for life. At the time of the decedent's death, A was 47 years and 5 months old. In the month in which the decedent died, the section 7520 rate was 6.2 percent. Under Table S in paragraph (d)(7) of this section, the remainder factor at 6.2 percent for determining the present value of the remainder interest due at the death of a person aged 47, the number of years nearest A's actual age at the decedent's death, is .18672. The present value of the remainder interest at the date of the decedent's death is, therefore, $9,336.00 ($50,000 × .18672).

Example 2. Income payable for an individual's life. A's parent bequeathed an income interest in property to A for life, with the remainder interest passing to B at A's death. At the time of the parent's death, the value of the property was $50,000 and A was 30 years and 10 months old. The section 7520 rate at the time of the parent's death was 6.2 percent. Under Table S in paragraph (d)(7) of this section, the remainder factor at 6.2 percent for determining the present value of the remainder interest due at the death of a person aged 31, the number of years closest to A's age at the decedent's death, is .08697. Converting this remainder factor to an income factor, as described in paragraph (d)(2)(iii) of this section, the factor for determining the present value of an income interest for the life of a person aged 31 is .91303. The present value of A's interest at the time of the parent's death is, therefore, $45,651.50 ($50,000 × .91303).

Example 3. Annuity payable for an individual's life. A purchased an annuity for the benefit of both A and B. Under the terms of the annuity contract, at A's death, a survivor annuity of $10,000 per year payable in equal semiannual installments made at the end of each interval is payable to B for life. At A's death, B was 45 years and 7 months old. Also, at A's death, the section 7520 rate was 4.8 percent. Under Table S in paragraph (d)(7) of this section, the factor at 4.8 percent for determining the present value of the remainder interest at the death of a person age 46 (the number of years nearest B's actual age) is .24774. By converting the factor to an annuity factor, as described in paragraph (d)(2)(iv)(A) of this section, the factor for the present value of an annuity payable until the death of a person age 46 is 15.6721 (1.000000 minus .24774, divided by .048). The adjustment factor from Table K in paragraph (d)(6) of this section at an interest rate of 4.8 percent for semiannual annuity payments made at the end of the period is 1.0119. The present value of the annuity at the date of A's death is, therefore, $158,585.98 ($10,000 × 15.6721 × 1.0119).

Example 4. Annuity payable for a term of years. The decedent, or the decedent's estate, was entitled to receive an annuity of $10,000 per year payable in equal quarterly installments at the end of each quarter

throughout a term certain. At the time of the decedent's death, the section 7520 rate was 9.8 percent. A quarterly payment had been made immediately prior to the decedent's death and payments were to continue for 5 more years. Under Table B in paragraph (d)(6) of this section for the interest rate of 9.8 percent, the factor for the present value of a remainder interest due after a term of 5 years is .626597. Converting the factor to an annuity factor, as described in paragraph (d)(2)(iv)(A) of this section, the factor for the present value of an annuity for a term of 5 years is 3.8102 (1.000000 minus .626597, divided by .098). The adjustment factor from Table K in paragraph (d)(6) of this section at an interest rate of 9.8 percent for quarterly annuity payments made at the end of the period is 1.0360. The present value of the annuity is, therefore, $39,473.67 ($10,000 × 3.8102 × 1.0360).

* * * * *

(7) *Actuarial Table S and Table 2000CM where the valuation date is on or after May 1, 2009.* Except as provided in § 20.7520–2(b) (pertaining to certain limitations on the use of prescribed tables), for determination of the present value of an interest that is dependent on the termination of a life interest, Table 2000CM and Table S (single life remainder factors applicable where the valuation date is on or after May 1, 2009) contained in this paragraph (d)(7) and Table J and Table K contained in paragraph (d)(6) of this section, must be used in the application of the provisions of this section when the section 7520 interest rate component is between 0.2 and 14 percent.

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	0.2%	0.4%	0.6%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%
0	.85816	.73751	.63478	.54723	.47252	.40872	.35416	.30747	.26745	.23313
1	.85889	.73863	.63604	.54844	.47355	.40948	.35459	.30752	.26711	.23239
2	.86054	.74145	.63968	.55260	.47802	.41409	.35922	.31209	.27155	.23664
3	.86221	.74433	.64339	.55687	.48263	.41887	.36404	.31685	.27619	.24112
4	.86390	.74725	.64716	.56121	.48733	.42374	.36898	.32175	.28098	.24575
5	.86560	.75018	.65097	.56561	.49209	.42871	.37401	.32675	.28588	.25050
6	.86731	.75314	.65482	.57006	.49692	.43375	.37913	.33186	.29090	.25538
7	.86902	.75611	.65868	.57454	.50180	.43885	.38432	.33704	.29601	.26035
8	.87073	.75909	.66258	.57907	.50674	.44403	.38960	.34233	.30122	.26544
9	.87246	.76209	.66651	.58364	.51173	.44928	.39497	.34771	.30654	.27064
10	.87419	.76511	.67046	.58826	.51679	.45459	.40042	.35319	.31197	.27596
11	.87592	.76814	.67445	.59291	.52190	.45998	.40596	.35876	.31750	.28139
12	.87766	.77119	.67845	.59761	.52706	.46544	.41157	.36443	.32313	.28693
13	.87939	.77424	.68247	.60232	.53225	.47094	.41723	.37015	.32884	.29255
14	.88112	.77728	.68649	.60704	.53746	.47646	.42293	.37592	.33460	.29823
15	.88284	.78031	.69050	.61176	.54267	.48199	.42865	.38172	.34038	.30394
16	.88455	.78333	.69449	.61647	.54788	.48752	.43437	.38752	.34619	.30968
17	.88625	.78633	.69848	.62117	.55309	.49307	.44012	.39336	.35203	.31546
18	.88795	.78933	.70246	.62588	.55830	.49863	.44589	.39923	.35791	.32129
19	.88964	.79232	.70644	.63059	.56354	.50422	.45170	.40514	.36385	.32719
20	.89132	.79532	.71044	.63534	.56882	.50987	.45757	.41114	.36987	.33317
21	.89301	.79832	.71445	.64010	.57413	.51555	.46350	.41719	.37597	.33925
22	.89470	.80133	.71847	.64488	.57947	.52129	.46948	.42332	.38216	.34541
23	.89639	.80434	.72251	.64970	.58486	.52708	.47554	.42954	.38844	.35168
24	.89808	.80737	.72658	.65456	.59031	.53295	.48169	.43586	.39484	.35809
25	.89978	.81042	.73068	.65947	.59583	.53890	.48795	.44230	.40137	.36464
26	.90149	.81349	.73482	.66443	.60141	.54494	.49430	.44886	.40804	.37134
27	.90320	.81657	.73899	.66944	.60707	.55107	.50076	.45554	.41484	.37819
28	.90492	.81968	.74319	.67450	.61278	.55728	.50733	.46233	.42178	.38520
29	.90665	.82279	.74741	.67960	.61856	.56356	.51398	.46924	.42884	.39233
30	.90837	.82591	.75165	.68473	.62438	.56990	.52070	.47623	.43601	.39959
31	.91010	.82904	.75592	.68989	.63024	.57631	.52751	.48333	.44329	.40698
32	.91182	.83218	.76020	.69509	.63616	.58278	.53440	.49052	.45068	.41449
33	.91355	.83532	.76449	.70031	.64212	.58931	.54137	.49780	.45818	.42213
34	.91527	.83847	.76880	.70556	.64811	.59589	.54839	.50516	.46578	.42988

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	0.2%	0.4%	0.6%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%
35	.91700	.84162	.77312	.71082	.65414	.60253	.55549	.51261	.47347	.43774
36	.91872	.84477	.77744	.71611	.66021	.60921	.56266	.52014	.48127	.44572
37	.92043	.84792	.78178	.72142	.66631	.61594	.56989	.52774	.48916	.45381
38	.92215	.85107	.78613	.72675	.67244	.62272	.57718	.53544	.49715	.46201
39	.92386	.85422	.79048	.73210	.67860	.62955	.58453	.54320	.50523	.47032
40	.92557	.85736	.79483	.73746	.68479	.63641	.59194	.55104	.51340	.47873
41	.92727	.86050	.79918	.74283	.69100	.64331	.59940	.55894	.52165	.48724
42	.92896	.86364	.80354	.74820	.69723	.65024	.60690	.56691	.52998	.49585
43	.93065	.86677	.80789	.75359	.70348	.65721	.61447	.57495	.53840	.50457
44	.93234	.86990	.81225	.75899	.70976	.66422	.62208	.58305	.54690	.51338
45	.93402	.87302	.81660	.76439	.71605	.67125	.62973	.59122	.55547	.52228
46	.93569	.87613	.82095	.76980	.72236	.67832	.63743	.59945	.56413	.53129
47	.93735	.87924	.82530	.77521	.72867	.68541	.64517	.60773	.57286	.54037
48	.93901	.88233	.82964	.78062	.73501	.69253	.65295	.61606	.58166	.54955
49	.94065	.88541	.83397	.78604	.74135	.69967	.66077	.62446	.59053	.55882
50	.94229	.88849	.83830	.79145	.74771	.70684	.66864	.63292	.59949	.56819
51	.94393	.89156	.84263	.79688	.75409	.71404	.67655	.64143	.60852	.57766
52	.94556	.89462	.84695	.80230	.76048	.72127	.68450	.65001	.61763	.58722
53	.94717	.89767	.85126	.80772	.76687	.72852	.69249	.65863	.62680	.59687
54	.94878	.90070	.85555	.81313	.77326	.73577	.70050	.66730	.63603	.60658
55	.95037	.90371	.85983	.81853	.77964	.74302	.70851	.67598	.64530	.61635
56	.95195	.90670	.86406	.82388	.78599	.75024	.71651	.68465	.65457	.62613
57	.95351	.90965	.86827	.82920	.79230	.75744	.72448	.69332	.66384	.63593
58	.95505	.91257	.87243	.83447	.79857	.76459	.73242	.70195	.67309	.64573
59	.95657	.91546	.87655	.83970	.80479	.77170	.74033	.71057	.68233	.65553
60	.95807	.91832	.88064	.84490	.81098	.77879	.74822	.71918	.69158	.66534
61	.95955	.92115	.88469	.85005	.81713	.78584	.75608	.72776	.70081	.67515
62	.96101	.92395	.88869	.85515	.82323	.79283	.76388	.73630	.71001	.68494
63	.96245	.92670	.89265	.86020	.82926	.79977	.77164	.74479	.71917	.69470
64	.96387	.92942	.89655	.86518	.83524	.80665	.77933	.75323	.72828	.70443
65	.96527	.93210	.90040	.87011	.84116	.81346	.78697	.76162	.73735	.71411
66	.96665	.93476	.90423	.87502	.84706	.82027	.79461	.77002	.74645	.72385
67	.96802	.93739	.90803	.87990	.85292	.82705	.80223	.77841	.75554	.73359
68	.96937	.93999	.91179	.88472	.85874	.83378	.80980	.78676	.76461	.74331
69	.97070	.94255	.91549	.88949	.86449	.84044	.81731	.79504	.77362	.75299
70	.97200	.94506	.91914	.89419	.87016	.84702	.82473	.80326	.78256	.76260

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	0.2%	0.4%	0.6%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%
71	.97328	.94754	.92273	.89882	.87577	.85353	.83209	.81140	.79143	.77215
72	.97453	.94997	.92626	.90338	.88129	.85996	.83935	.81945	.80021	.78162
73	.97576	.95234	.92972	.90785	.88671	.86627	.84651	.82739	.80888	.79098
74	.97695	.95466	.93310	.91223	.89202	.87247	.85353	.83518	.81741	.80019
75	.97811	.95692	.93638	.91649	.89720	.87851	.86039	.84281	.82577	.80923
76	.97924	.95910	.93957	.92063	.90224	.88440	.86708	.85026	.83393	.81807
77	.98033	.96122	.94267	.92465	.90715	.89013	.87360	.85753	.84191	.82671
78	.98138	.96327	.94567	.92855	.91190	.89571	.87995	.86461	.84968	.83515
79	.98239	.96526	.94857	.93233	.91652	.90112	.88611	.87149	.85725	.84337
80	.98337	.96717	.95138	.93598	.92098	.90635	.89208	.87817	.86460	.85135
81	.98431	.96901	.95408	.93951	.92529	.91141	.89786	.88463	.87172	.85910
82	.98521	.97077	.95667	.94290	.92944	.91629	.90344	.89088	.87861	.86660
83	.98608	.97247	.95917	.94616	.93343	.92099	.90882	.89691	.88526	.87385
84	.98691	.97409	.96156	.94928	.93727	.92551	.91399	.90271	.89166	.88084
85	.98770	.97565	.96384	.95228	.94094	.92984	.91895	.90828	.89782	.88757
86	.98845	.97713	.96602	.95514	.94446	.93398	.92371	.91362	.90373	.89402
87	.98917	.97854	.96810	.95786	.94781	.93794	.92825	.91873	.90939	.90021
88	.98985	.97988	.97008	.96046	.95100	.94171	.93258	.92361	.91479	.90612
89	.99049	.98115	.97196	.96292	.95404	.94530	.93671	.92826	.91994	.91176
90	.99110	.98235	.97373	.96526	.95691	.94871	.94062	.93267	.92484	.91713
91	.99168	.98348	.97541	.96747	.95964	.95193	.94434	.93686	.92949	.92223
92	.99222	.98455	.97700	.96955	.96222	.95498	.94785	.94083	.93390	.92707
93	.99273	.98556	.97849	.97152	.96464	.95786	.95117	.94457	.93806	.93163
94	.99321	.98651	.97989	.97337	.96692	.96057	.95429	.94810	.94199	.93595
95	.99366	.98739	.98121	.97510	.96907	.96312	.95724	.95143	.94569	.94002
96	.99408	.98822	.98244	.97673	.97108	.96551	.95999	.95454	.94916	.94384
97	.99447	.98900	.98359	.97825	.97297	.96774	.96258	.95747	.95242	.94742
98	.99483	.98973	.98467	.97967	.97473	.96984	.96500	.96021	.95547	.95078
99	.99518	.99040	.98568	.98101	.97638	.97180	.96727	.96278	.95834	.95394
100	.99549	.99103	.98661	.98224	.97791	.97362	.96937	.96516	.96100	.95687
101	.99579	.99162	.98750	.98340	.97935	.97534	.97136	.96742	.96351	.95964
102	.99607	.99217	.98831	.98448	.98068	.97692	.97319	.96950	.96583	.96220
103	.99634	.99271	.98911	.98553	.98199	.97848	.97500	.97155	.96812	.96473
104	.99659	.99320	.98984	.98651	.98320	.97992	.97666	.97344	.97023	.96705
105	.99683	.99369	.99056	.98747	.98439	.98134	.97830	.97530	.97231	.96934
106	.99713	.99429	.99146	.98865	.98586	.98309	.98033	.97760	.97488	.97218
107	.99747	.99496	.99246	.98998	.98751	.98506	.98262	.98020	.97779	.97539
108	.99800	.99602	.99404	.99208	.99012	.98818	.98624	.98431	.98240	.98049
109	.99900	.99801	.99702	.99603	.99505	.99407	.99310	.99213	.99116	.99020

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	2.2%	2.4%	2.6%	2.8%	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
0	.20365	.17830	.15648	.13767	.12144	.10741	.09528	.08476	.07564	.06772
1	.20251	.17677	.15458	.13542	.11885	.10451	.09209	.08131	.07194	.06379
2	.20656	.18060	.15817	.13877	.12197	.10740	.09476	.08376	.07420	.06586
3	.21084	.18466	.16200	.14236	.12533	.11054	.09767	.08647	.07670	.06817
4	.21527	.18888	.16600	.14613	.12887	.11385	.10076	.08935	.07938	.07066
5	.21984	.19324	.17013	.15004	.13255	.11730	.10399	.09237	.08220	.07329
6	.22454	.19773	.17440	.15408	.13636	.12089	.10736	.09553	.08515	.07605
7	.22933	.20233	.17879	.15824	.14030	.12460	.11085	.09880	.08822	.07892
8	.23425	.20705	.18330	.16254	.14436	.12844	.11447	.10221	.09142	.08193
9	.23930	.21191	.18795	.16697	.14857	.13243	.11824	.10576	.09476	.08507
10	.24446	.21689	.19273	.17153	.15292	.13655	.12214	.10945	.09824	.08835
11	.24975	.22200	.19764	.17623	.15740	.14081	.12619	.11328	.10187	.09177
12	.25515	.22724	.20268	.18107	.16202	.14521	.13037	.11724	.10563	.09533
13	.26064	.23256	.20782	.18600	.16674	.14972	.13466	.12132	.10949	.09900
14	.26620	.23796	.21303	.19101	.17154	.15430	.13903	.12547	.11344	.10273
15	.27179	.24340	.21829	.19607	.17639	.15894	.14344	.12968	.11743	.10652
16	.27742	.24887	.22358	.20117	.18128	.16361	.14790	.13391	.12145	.11034
17	.28309	.25439	.22893	.20632	.18622	.16834	.15241	.13821	.12554	.11421
18	.28881	.25997	.23434	.21154	.19123	.17314	.15699	.14258	.12969	.11815
19	.29461	.26563	.23983	.21684	.19633	.17803	.16167	.14703	.13393	.12218
20	.30050	.27139	.24543	.22226	.20156	.18304	.16646	.15161	.13829	.12633
21	.30649	.27726	.25114	.22779	.20689	.18817	.17138	.15631	.14277	.13060
22	.31259	.28323	.25697	.23344	.21235	.19342	.17642	.16114	.14739	.13500
23	.31879	.28934	.26293	.23923	.21795	.19882	.18161	.16612	.15215	.13955
24	.32515	.29559	.26904	.24519	.22372	.20440	.18699	.17128	.15710	.14429
25	.33166	.30201	.27534	.25133	.22969	.21018	.19256	.17665	.16226	.14924
26	.33833	.30861	.28182	.25767	.23586	.21616	.19835	.18224	.16764	.15440
27	.34517	.31538	.28849	.26420	.24224	.22236	.20436	.18804	.17324	.15980
28	.35217	.32233	.29535	.27093	.24882	.22877	.21058	.19407	.17907	.16542
29	.35932	.32944	.30237	.27784	.25558	.23537	.21701	.20031	.18511	.17126
30	.36661	.33670	.30956	.28492	.26253	.24216	.22362	.20674	.19135	.17730
31	.37403	.34411	.31691	.29217	.26965	.24914	.23044	.21338	.19779	.18355
32	.38160	.35167	.32442	.29960	.27697	.25631	.23745	.22022	.20445	.19002
33	.38930	.35939	.33211	.30721	.28447	.26368	.24467	.22727	.21133	.19671
34	.39713	.36724	.33993	.31497	.29213	.27123	.25207	.23451	.21839	.20360

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	2.2%	2.4%	2.6%	2.8%	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
35	.40509	.37523	.34792	.32290	.29998	.27896	.25967	.24195	.22567	.21070
36	.41318	.38337	.35606	.33100	.30800	.28688	.26746	.24961	.23317	.21803
37	.42139	.39165	.36435	.33927	.31621	.29499	.27546	.25746	.24087	.22557
38	.42974	.40008	.37281	.34771	.32460	.30330	.28366	.26554	.24880	.23334
39	.43821	.40864	.38141	.35631	.33316	.31179	.29205	.27381	.25694	.24133
40	.44679	.41734	.39016	.36507	.34189	.32046	.30064	.28229	.26529	.24954
41	.45549	.42616	.39906	.37399	.35080	.32932	.30942	.29097	.27386	.25797
42	.46430	.43511	.40809	.38307	.35987	.33836	.31840	.29986	.28264	.26662
43	.47324	.44421	.41729	.39232	.36913	.34760	.32758	.30897	.29165	.27552
44	.48229	.45343	.42663	.40172	.37857	.35702	.33697	.31829	.30088	.28465
45	.49144	.46277	.43611	.41128	.38817	.36663	.34655	.32782	.31033	.29400
46	.50072	.47225	.44574	.42101	.39796	.37644	.35634	.33757	.32002	.30360
47	.51009	.48185	.45550	.43089	.40791	.38642	.36633	.34753	.32992	.31343
48	.51958	.49158	.46540	.44093	.41803	.39660	.37652	.35770	.34006	.32351
49	.52917	.50143	.47545	.45113	.42833	.40696	.38691	.36810	.35043	.33383
50	.53888	.51141	.48566	.46150	.43883	.41754	.39754	.37874	.36106	.34442
51	.54871	.52153	.49602	.47204	.44951	.42832	.40838	.38961	.37194	.35528
52	.55865	.53179	.50653	.48276	.46038	.43931	.41945	.40073	.38307	.36641
53	.56869	.54217	.51718	.49363	.47143	.45050	.43074	.41208	.39446	.37781
54	.57882	.55265	.52796	.50465	.48265	.46186	.44222	.42364	.40607	.38945
55	.58902	.56322	.53884	.51579	.49400	.47338	.45387	.43540	.41789	.40131
56	.59926	.57383	.54978	.52701	.50544	.48501	.46565	.44729	.42987	.41335
57	.60951	.58449	.56078	.53830	.51698	.49675	.47755	.45932	.44201	.42555
58	.61978	.59517	.57182	.54964	.52858	.50858	.48956	.47147	.45427	.43790
59	.63007	.60589	.58290	.56105	.54027	.52050	.50167	.48375	.46668	.45041
60	.64039	.61665	.59405	.57254	.55205	.53253	.51392	.49617	.47925	.46310
61	.65072	.62743	.60524	.58409	.56390	.54465	.52627	.50872	.49196	.47595
62	.66104	.63822	.61645	.59566	.57581	.55683	.53870	.52136	.50478	.48892
63	.67133	.64900	.62766	.60726	.58774	.56907	.55120	.53409	.51770	.50200
64	.68161	.65977	.63887	.61887	.59970	.58134	.56375	.54688	.53071	.51519
65	.69186	.67053	.65009	.63049	.61170	.59367	.57637	.55976	.54381	.52849
66	.70216	.68136	.66140	.64223	.62383	.60615	.58916	.57283	.55713	.54203
67	.71250	.69224	.67277	.65405	.63605	.61874	.60208	.58605	.57062	.55575
68	.72283	.70312	.68416	.66590	.64833	.63140	.61509	.59938	.58423	.56963
69	.73312	.71398	.69553	.67776	.66062	.64409	.62815	.61277	.59793	.58360
70	.74335	.72479	.70688	.68959	.67291	.65680	.64124	.62621	.61168	.59764

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	2.2%	2.4%	2.6%	2.8%	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
71	.75353	.73556	.71819	.70141	.68519	.66951	.65434	.63968	.62549	.61176
72	.76364	.74626	.72945	.71318	.69744	.68220	.66745	.65317	.63933	.62593
73	.77365	.75686	.74061	.72487	.70962	.69484	.68051	.66662	.65315	.64009
74	.78350	.76733	.75164	.73643	.72167	.70735	.69346	.67997	.66688	.65417
75	.79318	.77761	.76249	.74781	.73355	.71971	.70625	.69318	.68048	.66813
76	.80266	.78769	.77314	.75899	.74524	.73187	.71886	.70621	.69390	.68192
77	.81194	.79756	.78358	.76997	.75672	.74382	.73127	.71904	.70713	.69553
78	.82100	.80722	.79380	.78072	.76798	.75556	.74346	.73166	.72016	.70894
79	.82984	.81664	.80378	.79124	.77900	.76706	.75542	.74405	.73296	.72213
80	.83843	.82582	.81351	.80149	.78976	.77830	.76711	.75618	.74550	.73507
81	.84678	.83474	.82298	.81148	.80025	.78927	.77853	.76803	.75777	.74773
82	.85487	.84339	.83217	.82119	.81045	.79994	.78966	.77959	.76974	.76009
83	.86269	.85177	.84107	.83060	.82035	.81030	.80047	.79083	.78139	.77214
84	.87024	.85986	.84968	.83970	.82993	.82035	.81095	.80174	.79271	.78385
85	.87751	.86765	.85798	.84849	.83919	.83005	.82110	.81230	.80368	.79521
86	.88450	.87515	.86597	.85696	.84811	.83942	.83089	.82251	.81428	.80619
87	.89119	.88234	.87363	.86508	.85668	.84843	.84031	.83234	.82450	.81679
88	.89760	.88922	.88099	.87289	.86492	.85708	.84938	.84180	.83434	.82700
89	.90372	.89580	.88801	.88034	.87280	.86537	.85806	.85087	.84378	.83681
90	.90954	.90207	.89471	.88746	.88032	.87329	.86637	.85954	.85282	.84620
91	.91508	.90803	.90109	.89424	.88750	.88085	.87429	.86783	.86146	.85518
92	.92033	.91369	.90714	.90068	.89432	.88803	.88184	.87572	.86969	.86374
93	.92530	.91904	.91287	.90678	.90078	.89484	.88899	.88321	.87751	.87188
94	.92999	.92411	.91830	.91256	.90690	.90130	.89578	.89032	.88493	.87961
95	.93442	.92889	.92342	.91802	.91269	.90741	.90220	.89706	.89197	.88694
96	.93858	.93338	.92824	.92316	.91813	.91316	.90825	.90340	.89859	.89385
97	.94248	.93759	.93276	.92798	.92325	.91857	.91395	.90937	.90484	.90036
98	.94614	.94155	.93701	.93252	.92807	.92367	.91931	.91500	.91073	.90650
99	.94959	.94528	.94101	.93679	.93260	.92846	.92436	.92030	.91628	.91229
100	.95278	.94874	.94473	.94075	.93682	.93292	.92906	.92523	.92144	.91769
101	.95581	.95201	.94824	.94451	.94081	.93715	.93352	.92992	.92635	.92281
102	.95860	.95503	.95149	.94798	.94450	.94105	.93763	.93424	.93088	.92754
103	.96136	.95802	.95470	.95142	.94816	.94492	.94171	.93853	.93538	.93224
104	.96390	.96077	.95766	.95458	.95152	.94848	.94547	.94248	.93951	.93657
105	.96640	.96347	.96057	.95769	.95483	.95199	.94917	.94637	.94359	.94083
106	.96950	.96684	.96420	.96157	.95896	.95636	.95379	.95123	.94868	.94616
107	.97301	.97064	.96829	.96595	.96362	.96131	.95901	.95672	.95445	.95219
108	.97859	.97670	.97482	.97295	.97109	.96923	.96739	.96555	.96373	.96191
109	.98924	.98828	.98733	.98638	.98544	.98450	.98356	.98263	.98170	.98077

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
0	.06083	.05483	.04959	.04501	.04101	.03749	.03441	.03170	.02931	.02721
1	.05668	.05049	.04507	.04034	.03618	.03254	.02934	.02652	.02403	.02183
2	.05858	.05222	.04665	.04178	.03750	.03373	.03042	.02750	.02492	.02264
3	.06072	.05420	.04848	.04346	.03904	.03516	.03173	.02871	.02603	.02366
4	.06303	.05634	.05046	.04530	.04075	.03674	.03319	.03006	.02729	.02483
5	.06547	.05861	.05258	.04726	.04258	.03844	.03478	.03153	.02866	.02610
6	.06805	.06102	.05482	.04935	.04453	.04026	.03647	.03312	.03014	.02749
7	.07074	.06353	.05717	.05155	.04658	.04217	.03826	.03479	.03171	.02895
8	.07356	.06617	.05964	.05386	.04875	.04421	.04017	.03658	.03338	.03053
9	.07651	.06895	.06225	.05631	.05105	.04637	.04220	.03849	.03518	.03222
10	.07960	.07185	.06499	.05889	.05347	.04865	.04435	.04052	.03709	.03402
11	.08283	.07490	.06786	.06160	.05603	.05106	.04663	.04267	.03912	.03594
12	.08620	.07808	.07087	.06444	.05871	.05360	.04903	.04494	.04127	.03798
13	.08967	.08137	.07397	.06738	.06149	.05623	.05152	.04729	.04351	.04010
14	.09321	.08472	.07715	.07038	.06433	.05892	.05406	.04971	.04579	.04227
15	.09680	.08812	.08036	.07342	.06721	.06164	.05664	.05214	.04810	.04445
16	.10041	.09154	.08360	.07649	.07011	.06438	.05923	.05459	.05041	.04664
17	.10409	.09502	.08689	.07960	.07305	.06716	.06185	.05707	.05276	.04886
18	.10782	.09855	.09024	.08276	.07604	.06998	.06452	.05959	.05514	.05111
19	.11164	.10217	.09366	.08600	.07910	.07288	.06726	.06218	.05758	.05341
20	.11559	.10592	.09721	.08937	.08228	.07589	.07010	.06487	.06012	.05582
21	.11965	.10977	.10087	.09283	.08557	.07900	.07305	.06765	.06276	.05831
22	.12383	.11376	.10465	.09642	.08897	.08223	.07610	.07055	.06550	.06090
23	.12817	.11789	.10859	.10016	.09252	.08559	.07930	.07358	.06837	.06363
24	.13270	.12221	.11270	.10408	.09625	.08914	.08267	.07678	.07141	.06651
25	.13744	.12674	.11703	.10821	.10019	.09289	.08625	.08018	.07465	.06960
26	.14239	.13149	.12158	.11256	.10435	.09686	.09003	.08380	.07810	.07288
27	.14758	.13647	.12636	.11714	.10873	.10106	.09405	.08764	.08177	.07639
28	.15300	.14169	.13137	.12195	.11335	.10549	.09829	.09171	.08567	.08012
29	.15864	.14712	.13660	.12698	.11819	.11013	.10275	.09598	.08977	.08406
30	.16448	.15275	.14203	.13222	.12323	.11498	.10742	.10047	.09408	.08820
31	.17053	.15861	.14769	.13768	.12849	.12006	.11230	.10517	.09860	.09255
32	.17680	.16468	.15357	.14336	.13398	.12535	.11741	.11009	.10335	.09712
33	.18330	.17099	.15968	.14927	.13970	.13088	.12275	.11525	.10832	.10192
34	.19000	.17750	.16599	.15539	.14562	.13661	.12829	.12061	.11350	.10693

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
35	.19692	.18423	.17253	.16174	.15178	.14258	.13408	.12621	.11892	.11217
36	.20407	.19119	.17931	.16833	.15818	.14879	.14009	.13204	.12457	.11764
37	.21144	.19838	.18631	.17515	.16481	.15523	.14635	.13811	.13046	.12335
38	.21904	.20582	.19357	.18222	.17170	.16193	.15287	.14444	.13661	.12932
39	.22687	.21348	.20105	.18952	.17882	.16887	.15962	.15102	.14300	.13554
40	.23493	.22137	.20878	.19707	.18619	.17606	.16663	.15784	.14965	.14201
41	.24322	.22950	.21674	.20487	.19381	.18350	.17390	.16493	.15656	.14873
42	.25173	.23786	.22494	.21290	.20168	.19120	.18141	.17227	.16372	.15572
43	.26049	.24648	.23342	.22122	.20982	.19918	.18922	.17990	.17118	.16301
44	.26950	.25535	.24214	.22979	.21824	.20742	.19730	.18781	.17892	.17057
45	.27874	.26447	.25112	.23862	.22692	.21595	.20566	.19600	.18694	.17843
46	.28824	.27385	.26038	.24774	.23589	.22476	.21431	.20450	.19527	.18659
47	.29798	.28349	.26989	.25712	.24513	.23386	.22326	.21328	.20390	.19505
48	.30797	.29338	.27967	.26678	.25466	.24325	.23250	.22238	.21283	.20383
49	.31822	.30355	.28974	.27674	.26449	.25294	.24206	.23179	.22210	.21294
50	.32876	.31401	.30011	.28701	.27465	.26298	.25196	.24156	.23172	.22242
51	.33958	.32477	.31079	.29759	.28513	.27335	.26221	.25168	.24170	.23226
52	.35068	.33582	.32178	.30851	.29595	.28407	.27282	.26216	.25206	.24249
53	.36206	.34717	.33308	.31974	.30710	.29513	.28378	.27301	.26279	.25309
54	.37371	.35880	.34467	.33127	.31857	.30651	.29507	.28420	.27388	.26406
55	.38559	.37067	.35652	.34308	.33032	.31820	.30668	.29572	.28529	.27537
56	.39765	.38275	.36859	.35512	.34232	.33014	.31855	.30751	.29699	.28697
57	.40990	.39502	.38086	.36739	.35455	.34233	.33068	.31957	.30898	.29887
58	.42231	.40747	.39333	.37985	.36700	.35474	.34304	.33188	.32121	.31103
59	.43490	.42011	.40600	.39253	.37968	.36740	.35567	.34446	.33374	.32348
60	.44768	.43296	.41890	.40546	.39261	.38033	.36858	.35733	.34656	.33625
61	.46064	.44600	.43200	.41860	.40578	.39351	.38175	.37048	.35968	.34933
62	.47373	.45920	.44527	.43194	.41915	.40690	.39514	.38387	.37305	.36267
63	.48696	.47253	.45870	.44544	.43271	.42049	.40876	.39749	.38666	.37625
64	.50030	.48601	.47229	.45911	.44645	.43428	.42258	.41133	.40051	.39010
65	.51377	.49963	.48603	.47295	.46037	.44827	.43662	.42540	.41460	.40420
66	.52750	.51352	.50007	.48711	.47464	.46262	.45103	.43987	.42911	.41872
67	.54144	.52765	.51436	.50154	.48919	.47727	.46578	.45468	.44397	.43363
68	.55554	.54196	.52885	.51619	.50398	.49218	.48079	.46978	.45915	.44887
69	.56976	.55640	.54349	.53102	.51896	.50731	.49603	.48513	.47458	.46438
70	.58407	.57095	.55826	.54598	.53410	.52260	.51147	.50069	.49025	.48013

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
71	.59848	.58561	.57316	.56109	.54940	.53808	.52710	.51646	.50615	.49614
72	.61294	.60035	.58815	.57632	.56484	.55371	.54291	.53243	.52225	.51237
73	.62741	.61512	.60318	.59160	.58035	.56943	.55882	.54851	.53849	.52876
74	.64183	.62983	.61818	.60686	.59586	.58516	.57476	.56464	.55480	.54523
75	.65612	.64444	.63309	.62204	.61129	.60083	.59065	.58074	.57109	.56169
76	.67026	.65891	.64786	.63710	.62661	.61640	.60646	.59676	.58731	.57810
77	.68423	.67321	.66248	.65201	.64181	.63186	.62215	.61269	.60345	.59444
78	.69800	.68733	.67692	.66676	.65684	.64717	.63772	.62849	.61948	.61068
79	.71156	.70124	.69116	.68132	.67170	.66230	.65312	.64414	.63537	.62680
80	.72487	.71490	.70516	.69563	.68632	.67721	.66830	.65959	.65106	.64272
81	.73791	.72830	.71890	.70970	.70069	.69188	.68325	.67481	.66654	.65844
82	.75065	.74140	.73235	.72348	.71479	.70628	.69794	.68977	.68176	.67391
83	.76308	.75419	.74548	.73695	.72858	.72037	.71232	.70443	.69669	.68909
84	.77516	.76664	.75828	.75008	.74203	.73413	.72638	.71877	.71130	.70396
85	.78689	.77873	.77072	.76285	.75512	.74753	.74008	.73275	.72556	.71849
86	.79825	.79044	.78278	.77524	.76783	.76055	.75340	.74636	.73944	.73264
87	.80921	.80176	.79443	.78722	.78014	.77316	.76630	.75956	.75292	.74638
88	.81978	.81268	.80569	.79880	.79203	.78536	.77880	.77234	.76598	.75971
89	.82994	.82317	.81651	.80995	.80349	.79712	.79085	.78467	.77859	.77259
90	.83967	.83324	.82690	.82065	.81450	.80843	.80244	.79655	.79073	.78500
91	.84898	.84288	.83685	.83091	.82505	.81928	.81358	.80795	.80241	.79693
92	.85787	.85208	.84636	.84072	.83515	.82966	.82423	.81888	.81360	.80838
93	.86632	.86083	.85541	.85006	.84477	.83955	.83440	.82931	.82428	.81931
94	.87435	.86915	.86402	.85894	.85393	.84898	.84409	.83925	.83447	.82975
95	.88197	.87705	.87219	.86739	.86265	.85795	.85331	.84872	.84419	.83970
96	.88915	.88451	.87991	.87537	.87088	.86643	.86203	.85768	.85338	.84912
97	.89593	.89154	.88720	.88290	.87865	.87444	.87028	.86616	.86208	.85804
98	.90232	.89818	.89408	.89002	.88600	.88202	.87808	.87418	.87031	.86649
99	.90835	.90444	.90057	.89674	.89294	.88918	.88546	.88177	.87811	.87449
100	.91397	.91028	.90663	.90301	.89942	.89587	.89234	.88885	.88539	.88196
101	.91930	.91583	.91238	.90897	.90558	.90223	.89890	.89560	.89233	.88908
102	.92424	.92096	.91771	.91448	.91128	.90811	.90496	.90184	.89875	.89568
103	.92914	.92605	.92300	.91996	.91695	.91397	.91100	.90806	.90514	.90225
104	.93364	.93074	.92786	.92501	.92217	.91935	.91656	.91379	.91103	.90830
105	.93809	.93537	.93266	.92998	.92731	.92467	.92204	.91943	.91683	.91426
106	.94365	.94115	.93867	.93621	.93376	.93133	.92892	.92651	.92413	.92176
107	.94994	.94771	.94549	.94328	.94108	.93890	.93673	.93457	.93242	.93028
108	.96010	.95830	.95651	.95472	.95295	.95118	.94942	.94767	.94593	.94420
109	.97985	.97893	.97801	.97710	.97619	.97529	.97438	.97348	.97259	.97170

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
0	.02534	.02370	.02223	.02093	.01978	.01874	.01782	.01699	.01625	.01559
1	.01989	.01817	.01664	.01528	.01406	.01298	.01202	.01115	.01037	.00967
2	.02061	.01882	.01722	.01580	.01454	.01340	.01239	.01148	.01066	.00993
3	.02156	.01969	.01802	.01654	.01521	.01403	.01297	.01201	.01115	.01038
4	.02264	.02069	.01896	.01741	.01602	.01478	.01367	.01267	.01176	.01095
5	.02383	.02180	.01999	.01838	.01693	.01563	.01446	.01341	.01246	.01161
6	.02512	.02301	.02113	.01944	.01793	.01657	.01535	.01424	.01325	.01235
7	.02650	.02430	.02234	.02058	.01900	.01758	.01630	.01514	.01410	.01315
8	.02798	.02570	.02365	.02182	.02017	.01868	.01734	.01613	.01503	.01404
9	.02957	.02720	.02507	.02316	.02143	.01988	.01848	.01721	.01606	.01502
10	.03128	.02881	.02659	.02460	.02280	.02118	.01971	.01838	.01718	.01608
11	.03309	.03053	.02823	.02615	.02428	.02258	.02105	.01966	.01839	.01725
12	.03503	.03237	.02997	.02781	.02585	.02408	.02248	.02103	.01971	.01850
13	.03704	.03428	.03179	.02954	.02750	.02565	.02398	.02246	.02108	.01982
14	.03909	.03623	.03364	.03130	.02918	.02726	.02551	.02392	.02248	.02116
15	.04117	.03820	.03551	.03308	.03087	.02886	.02704	.02538	.02387	.02249
16	.04324	.04016	.03737	.03484	.03254	.03046	.02855	.02682	.02524	.02379
17	.04533	.04214	.03924	.03661	.03422	.03205	.03007	.02826	.02661	.02509
18	.04746	.04415	.04114	.03841	.03592	.03366	.03159	.02970	.02798	.02639
19	.04963	.04620	.04309	.04025	.03766	.03530	.03315	.03117	.02937	.02772
20	.05191	.04835	.04512	.04217	.03948	.03702	.03478	.03272	.03083	.02910
21	.05427	.05058	.04723	.04416	.04137	.03881	.03647	.03432	.03235	.03054
22	.05672	.05291	.04943	.04625	.04334	.04067	.03823	.03599	.03394	.03205
23	.05930	.05535	.05174	.04844	.04542	.04265	.04010	.03777	.03562	.03364
24	.06204	.05795	.05421	.05078	.04764	.04476	.04211	.03967	.03743	.03536
25	.06497	.06074	.05687	.05331	.05005	.04705	.04429	.04174	.03940	.03724
26	.06811	.06373	.05972	.05603	.05264	.04952	.04665	.04400	.04155	.03929
27	.07146	.06694	.06278	.05895	.05543	.05219	.04920	.04644	.04389	.04153
28	.07503	.07036	.06605	.06209	.05844	.05507	.05196	.04908	.04642	.04396
29	.07881	.07398	.06953	.06542	.06163	.05814	.05490	.05191	.04913	.04656
30	.08279	.07780	.07319	.06894	.06502	.06138	.05802	.05491	.05202	.04933
31	.08697	.08182	.07707	.07267	.06860	.06483	.06134	.05810	.05509	.05229
32	.09137	.08606	.08115	.07660	.07239	.06848	.06485	.06148	.05835	.05543
33	.09601	.09053	.08546	.08075	.07639	.07234	.06858	.06508	.06182	.05878
34	.10084	.09520	.08996	.08511	.08059	.07640	.07249	.06886	.06547	.06231

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
35	.10590	.10009	.09470	.08968	.08501	.08067	.07662	.07285	.06933	.06605
36	.11120	.10522	.09966	.09448	.08966	.08517	.08098	.07706	.07341	.06999
37	.11674	.11059	.10486	.09952	.09454	.08990	.08556	.08150	.07771	.07416
38	.12254	.11621	.11032	.10481	.09968	.09487	.09039	.08618	.08225	.07856
39	.12857	.12208	.11601	.11035	.10505	.10009	.09545	.09110	.08702	.08320
40	.13487	.12820	.12196	.11613	.11067	.10555	.10076	.09626	.09204	.08807
41	.14142	.13458	.12817	.12217	.11655	.11127	.10632	.10167	.09730	.09319
42	.14823	.14122	.13464	.12848	.12269	.11725	.11214	.10734	.10282	.09856
43	.15535	.14816	.14141	.13508	.12913	.12353	.11826	.11330	.10863	.10422
44	.16274	.15538	.14847	.14196	.13585	.13008	.12466	.11954	.11472	.11016
45	.17042	.16290	.15581	.14914	.14286	.13694	.13135	.12608	.12110	.11640
46	.17842	.17073	.16348	.15664	.15020	.14411	.13836	.13293	.12780	.12294
47	.18672	.17886	.17145	.16445	.15784	.15159	.14568	.14010	.13481	.12980
48	.19534	.18732	.17974	.17258	.16581	.15940	.15334	.14759	.14215	.13699
49	.20429	.19612	.18838	.18106	.17413	.16757	.16134	.15544	.14984	.14453
50	.21362	.20529	.19740	.18993	.18284	.17612	.16974	.16368	.15793	.15247
51	.22332	.21484	.20680	.19917	.19194	.18506	.17853	.17232	.16642	.16080
52	.23341	.22479	.21660	.20883	.20144	.19442	.18774	.18138	.17533	.16957
53	.24388	.23513	.22681	.21889	.21136	.20419	.19737	.19087	.18467	.17876
54	.25473	.24585	.23739	.22935	.22168	.21437	.20741	.20076	.19442	.18837
55	.26593	.25693	.24835	.24017	.23238	.22494	.21784	.21105	.20458	.19838
56	.27742	.26831	.25962	.25132	.24340	.23583	.22860	.22169	.21508	.20875
57	.28922	.28001	.27121	.26280	.25476	.24707	.23971	.23267	.22593	.21947
58	.30129	.29199	.28309	.27457	.26642	.25862	.25114	.24398	.23712	.23053
59	.31367	.30428	.29529	.28667	.27842	.27051	.26293	.25565	.24867	.24197
60	.32638	.31691	.30784	.29914	.29079	.28278	.27509	.26771	.26062	.25380
61	.33940	.32987	.32073	.31195	.30352	.29542	.28763	.28015	.27295	.26603
62	.35269	.34311	.33391	.32506	.31656	.30837	.30050	.29293	.28564	.27862
63	.36625	.35663	.34738	.33847	.32990	.32165	.31370	.30604	.29867	.29155
64	.38007	.37043	.36113	.35218	.34356	.33524	.32723	.31950	.31204	.30484
65	.39417	.38451	.37519	.36620	.35753	.34917	.34110	.33330	.32577	.31850
66	.40871	.39905	.38972	.38071	.37201	.36361	.35550	.34765	.34006	.33273
67	.42365	.41400	.40468	.39567	.38696	.37853	.37038	.36250	.35487	.34749
68	.43892	.42931	.42001	.41101	.40230	.39387	.38570	.37780	.37014	.36272
69	.45450	.44493	.43567	.42670	.41800	.40958	.40141	.39350	.38582	.37837
70	.47033	.46083	.45162	.44269	.43403	.42563	.41748	.40957	.40189	.39443

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
71	.48644	.47702	.46788	.45901	.45040	.44203	.43391	.42602	.41835	.41090
72	.50278	.49347	.48441	.47562	.46707	.45877	.45069	.44284	.43520	.42776
73	.51930	.51010	.50115	.49245	.48399	.47575	.46774	.45994	.45234	.44494
74	.53591	.52684	.51802	.50943	.50106	.49291	.48497	.47724	.46970	.46235
75	.55253	.54361	.53492	.52645	.51820	.51015	.50230	.49465	.48719	.47991
76	.56912	.56036	.55182	.54349	.53536	.52742	.51968	.51213	.50475	.49754
77	.58565	.57706	.56868	.56050	.55251	.54471	.53708	.52964	.52236	.51525
78	.60209	.59369	.58549	.57747	.56963	.56197	.55448	.54715	.53999	.53298
79	.61841	.61021	.60219	.59435	.58668	.57917	.57182	.56463	.55760	.55071
80	.63456	.62657	.61875	.61109	.60359	.59625	.58906	.58202	.57512	.56836
81	.65050	.64273	.63512	.62766	.62034	.61318	.60616	.59927	.59252	.58590
82	.66621	.65867	.65127	.64401	.63690	.62992	.62308	.61636	.60977	.60330
83	.68164	.67433	.66716	.66012	.65321	.64642	.63976	.63322	.62680	.62050
84	.69676	.68969	.68275	.67593	.66923	.66265	.65618	.64983	.64358	.63745
85	.71154	.70472	.69801	.69141	.68493	.67856	.67229	.66613	.66007	.65412
86	.72595	.71937	.71290	.70654	.70028	.69412	.68806	.68210	.67623	.67046
87	.73995	.73362	.72740	.72127	.71523	.70929	.70344	.69768	.69201	.68642
88	.75354	.74746	.74148	.73558	.72978	.72406	.71842	.71287	.70739	.70200
89	.76668	.76085	.75511	.74945	.74387	.73837	.73295	.72761	.72234	.71714
90	.77934	.77377	.76827	.76284	.75749	.75222	.74701	.74188	.73681	.73181
91	.79153	.78620	.78094	.77575	.77063	.76558	.76059	.75566	.75080	.74600
92	.80323	.79814	.79312	.78816	.78326	.77843	.77365	.76894	.76428	.75967
93	.81440	.80956	.80477	.80004	.79536	.79074	.78618	.78166	.77721	.77280
94	.82508	.82047	.81591	.81140	.80694	.80253	.79817	.79387	.78961	.78539
95	.83526	.83088	.82654	.82225	.81800	.81380	.80965	.80554	.80148	.79746
96	.84491	.84074	.83662	.83254	.82850	.82450	.82055	.81663	.81276	.80892
97	.85405	.85009	.84617	.84230	.83846	.83466	.83089	.82717	.82348	.81982
98	.86270	.85895	.85523	.85155	.84791	.84430	.84072	.83718	.83367	.83019
99	.87090	.86735	.86382	.86033	.85687	.85345	.85005	.84668	.84335	.84004
100	.87856	.87519	.87185	.86854	.86526	.86201	.85878	.85559	.85242	.84927
101	.88587	.88268	.87952	.87638	.87327	.87019	.86713	.86409	.86109	.85810
102	.89263	.88961	.88662	.88364	.88069	.87777	.87487	.87199	.86913	.86629
103	.89938	.89653	.89370	.89089	.88810	.88534	.88259	.87987	.87717	.87448
104	.90558	.90289	.90021	.89756	.89492	.89231	.88971	.88713	.88456	.88202
105	.91170	.90916	.90664	.90413	.90164	.89917	.89672	.89428	.89186	.88945
106	.91940	.91706	.91474	.91242	.91013	.90784	.90558	.90332	.90108	.89885
107	.92816	.92605	.92395	.92186	.91978	.91772	.91567	.91362	.91159	.90957
108	.94247	.94075	.93904	.93734	.93565	.93396	.93229	.93062	.92895	.92730
109	.97081	.96992	.96904	.96816	.96729	.96642	.96555	.96468	.96382	.96296

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
0	.01498	.01444	.01395	.01351	.01310	.01273	.01240	.01209	.01181	.01155
1	.00904	.00847	.00796	.00749	.00707	.00668	.00633	.00601	.00572	.00545
2	.00926	.00866	.00812	.00763	.00718	.00677	.00640	.00606	.00575	.00547
3	.00968	.00905	.00848	.00796	.00748	.00705	.00666	.00630	.00597	.00567
4	.01021	.00955	.00894	.00839	.00789	.00744	.00702	.00664	.00629	.00597
5	.01083	.01013	.00949	.00891	.00839	.00790	.00746	.00706	.00669	.00635
6	.01153	.01080	.01012	.00951	.00895	.00844	.00798	.00755	.00715	.00679
7	.01229	.01151	.01081	.01016	.00957	.00903	.00854	.00808	.00767	.00728
8	.01314	.01232	.01157	.01089	.01026	.00969	.00917	.00869	.00825	.00784
9	.01407	.01321	.01242	.01170	.01104	.01044	.00989	.00938	.00891	.00848
10	.01509	.01418	.01335	.01259	.01190	.01126	.01068	.01014	.00965	.00919
11	.01620	.01525	.01437	.01358	.01285	.01218	.01156	.01099	.01047	.00998
12	.01740	.01640	.01549	.01465	.01388	.01317	.01252	.01192	.01137	.01086
13	.01867	.01762	.01665	.01577	.01496	.01422	.01353	.01290	.01231	.01177
14	.01995	.01885	.01784	.01691	.01606	.01527	.01455	.01389	.01327	.01270
15	.02123	.02007	.01901	.01803	.01714	.01632	.01556	.01485	.01420	.01360
16	.02247	.02126	.02015	.01913	.01818	.01732	.01652	.01578	.01509	.01446
17	.02371	.02244	.02127	.02020	.01921	.01830	.01746	.01668	.01596	.01529
18	.02494	.02361	.02239	.02126	.02022	.01926	.01838	.01756	.01680	.01610
19	.02620	.02480	.02352	.02234	.02125	.02024	.01931	.01844	.01764	.01690
20	.02751	.02605	.02471	.02346	.02232	.02126	.02028	.01937	.01853	.01775
21	.02888	.02735	.02593	.02463	.02343	.02231	.02128	.02032	.01944	.01861
22	.03030	.02870	.02722	.02585	.02458	.02341	.02233	.02132	.02038	.01951
23	.03181	.03013	.02858	.02714	.02581	.02458	.02344	.02237	.02139	.02047
24	.03345	.03169	.03006	.02855	.02715	.02586	.02465	.02353	.02249	.02152
25	.03524	.03340	.03169	.03010	.02863	.02727	.02600	.02482	.02373	.02270
26	.03720	.03527	.03348	.03181	.03027	.02884	.02750	.02626	.02510	.02402
27	.03934	.03732	.03544	.03370	.03208	.03057	.02916	.02786	.02664	.02549
28	.04167	.03955	.03759	.03576	.03406	.03247	.03099	.02962	.02833	.02713
29	.04417	.04196	.03990	.03798	.03619	.03453	.03298	.03153	.03017	.02890
30	.04684	.04452	.04237	.04036	.03848	.03674	.03510	.03358	.03215	.03081
31	.04969	.04727	.04501	.04291	.04094	.03911	.03739	.03579	.03428	.03287
32	.05272	.05019	.04783	.04563	.04357	.04165	.03984	.03816	.03657	.03509
33	.05595	.05331	.05085	.04854	.04639	.04437	.04248	.04070	.03904	.03748
34	.05936	.05661	.05403	.05162	.04936	.04725	.04527	.04341	.04166	.04001

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
35	.06297	.06010	.05741	.05489	.05253	.05032	.04824	.04629	.04445	.04272
36	.06679	.06380	.06100	.05837	.05590	.05358	.05140	.04935	.04742	.04561
37	.07083	.06771	.06479	.06204	.05947	.05704	.05476	.05261	.05059	.04868
38	.07511	.07186	.06881	.06595	.06326	.06072	.05834	.05609	.05397	.05196
39	.07961	.07623	.07306	.07007	.06726	.06462	.06212	.05977	.05754	.05544
40	.08434	.08083	.07753	.07442	.07149	.06873	.06612	.06366	.06133	.05913
41	.08932	.08568	.08225	.07901	.07596	.07308	.07035	.06778	.06534	.06304
42	.09455	.09077	.08720	.08384	.08066	.07766	.07481	.07213	.06958	.06717
43	.10007	.09615	.09245	.08895	.08564	.08251	.07955	.07674	.07408	.07156
44	.10586	.10180	.09796	.09433	.09089	.08763	.08454	.08162	.07884	.07621
45	.11195	.10774	.10376	.09999	.09642	.09303	.08982	.08677	.08387	.08112
46	.11835	.11400	.10987	.10596	.10225	.09873	.09539	.09222	.08920	.08633
47	.12505	.12055	.11629	.11224	.10839	.10474	.10126	.09796	.09482	.09182
48	.13209	.12745	.12303	.11884	.11485	.11106	.10746	.10402	.10075	.09764
49	.13948	.13469	.13013	.12579	.12167	.11774	.11400	.11043	.10703	.10379
50	.14727	.14233	.13762	.13314	.12887	.12481	.12093	.11723	.11370	.11033
51	.15546	.15037	.14551	.14089	.13648	.13228	.12826	.12443	.12077	.11726
52	.16407	.15884	.15384	.14907	.14452	.14018	.13603	.13206	.12826	.12463
53	.17312	.16774	.16260	.15769	.15300	.14852	.14423	.14012	.13620	.13243
54	.18259	.17707	.17179	.16674	.16191	.15729	.15286	.14862	.14456	.14067
55	.19247	.18680	.18139	.17620	.17123	.16648	.16192	.15755	.15335	.14933
56	.20270	.19690	.19135	.18602	.18092	.17603	.17134	.16684	.16251	.15836
57	.21329	.20736	.20167	.19622	.19099	.18596	.18114	.17650	.17205	.16777
58	.22422	.21816	.21235	.20677	.20140	.19625	.19130	.18653	.18195	.17754
59	.23553	.22935	.22341	.21770	.21221	.20693	.20185	.19696	.19225	.18772
60	.24725	.24095	.23489	.22906	.22345	.21805	.21285	.20783	.20300	.19834
61	.25937	.25296	.24679	.24084	.23511	.22959	.22427	.21914	.21419	.20941
62	.27185	.26534	.25906	.25300	.24716	.24153	.23609	.23084	.22577	.22088
63	.28469	.27808	.27169	.26553	.25959	.25384	.24830	.24294	.23776	.23275
64	.29789	.29119	.28471	.27845	.27240	.26656	.26091	.25544	.25016	.24504
65	.31148	.30468	.29812	.29177	.28563	.27969	.27394	.26837	.26299	.25777
66	.32564	.31877	.31213	.30570	.29948	.29345	.28761	.28195	.27647	.27115
67	.34034	.33341	.32671	.32021	.31391	.30780	.30188	.29614	.29057	.28517
68	.35552	.34855	.34179	.33523	.32887	.32270	.31671	.31089	.30524	.29976
69	.37115	.36414	.35734	.35073	.34432	.33809	.33204	.32616	.32045	.31489
70	.38719	.38016	.37332	.36668	.36023	.35396	.34786	.34193	.33616	.33054

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
71	.40366	.39662	.38977	.38311	.37663	.37032	.36419	.35821	.35240	.34674
72	.42053	.41350	.40665	.39998	.39349	.38716	.38100	.37500	.36916	.36346
73	.43774	.43073	.42389	.41723	.41074	.40441	.39824	.39222	.38636	.38063
74	.45519	.44821	.44140	.43476	.42829	.42197	.41580	.40979	.40391	.39818
75	.47280	.46587	.45910	.45250	.44605	.43975	.43360	.42759	.42173	.41599
76	.49051	.48364	.47693	.47037	.46396	.45770	.45158	.44560	.43975	.43403
77	.50830	.50150	.49486	.48836	.48201	.47580	.46972	.46377	.45795	.45225
78	.52613	.51942	.51286	.50644	.50015	.49400	.48797	.48208	.47630	.47064
79	.54396	.53736	.53089	.52456	.51835	.51227	.50632	.50048	.49476	.48915
80	.56174	.55525	.54888	.54265	.53653	.53054	.52466	.51890	.51325	.50770
81	.57941	.57305	.56681	.56068	.55467	.54878	.54299	.53731	.53174	.52627
82	.59696	.59073	.58461	.57861	.57272	.56693	.56125	.55566	.55018	.54480
83	.61430	.60822	.60224	.59637	.59061	.58494	.57937	.57389	.56851	.56322
84	.63142	.62549	.61966	.61393	.60830	.60276	.59731	.59196	.58669	.58150
85	.64825	.64249	.63682	.63124	.62575	.62035	.61503	.60980	.60465	.59958
86	.66477	.65918	.65367	.64825	.64291	.63765	.63248	.62738	.62236	.61741
87	.68092	.67550	.67016	.66490	.65972	.65462	.64959	.64463	.63975	.63493
88	.69669	.69145	.68628	.68119	.67618	.67123	.66635	.66154	.65680	.65212
89	.71201	.70696	.70198	.69706	.69221	.68742	.68270	.67805	.67345	.66892
90	.72688	.72201	.71721	.71246	.70779	.70317	.69861	.69411	.68966	.68528
91	.74126	.73658	.73196	.72739	.72289	.71844	.71404	.70970	.70541	.70117
92	.75513	.75063	.74620	.74181	.73748	.73320	.72897	.72479	.72066	.71657
93	.76844	.76414	.75988	.75568	.75152	.74741	.74334	.73932	.73535	.73142
94	.78123	.77711	.77303	.76901	.76502	.76108	.75718	.75332	.74951	.74573
95	.79348	.78954	.78565	.78179	.77798	.77421	.77047	.76677	.76312	.75950
96	.80513	.80137	.79765	.79397	.79032	.78671	.78314	.77960	.77610	.77263
97	.81621	.81262	.80908	.80556	.80208	.79864	.79522	.79184	.78849	.78517
98	.82674	.82333	.81995	.81660	.81328	.80999	.80673	.80351	.80031	.79713
99	.83677	.83352	.83030	.82711	.82395	.82082	.81771	.81463	.81158	.80855
100	.84616	.84307	.84001	.83697	.83396	.83097	.82801	.82507	.82216	.81927
101	.85514	.85221	.84930	.84641	.84355	.84070	.83788	.83509	.83231	.82956
102	.86348	.86069	.85792	.85517	.85245	.84974	.84706	.84439	.84175	.83912
103	.87182	.86918	.86655	.86395	.86136	.85880	.85625	.85372	.85121	.84872
104	.87950	.87699	.87450	.87203	.86957	.86713	.86471	.86231	.85992	.85755
105	.88706	.88468	.88232	.87998	.87765	.87534	.87304	.87076	.86849	.86624
106	.89664	.89444	.89225	.89008	.88792	.88577	.88364	.88152	.87941	.87731
107	.90756	.90557	.90358	.90160	.89964	.89768	.89574	.89380	.89188	.88997
108	.92565	.92401	.92238	.92075	.91914	.91753	.91592	.91433	.91274	.91116
109	.96211	.96125	.96041	.95956	.95872	.95788	.95704	.95620	.95537	.95455

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
0	.01132	.01110	.01089	.01071	.01053	.01037	.01022	.01008	.00995	.00983
1	.00520	.00497	.00476	.00457	.00439	.00423	.00407	.00393	.00379	.00367
2	.00521	.00496	.00474	.00454	.00435	.00417	.00401	.00385	.00371	.00358
3	.00539	.00513	.00490	.00468	.00447	.00429	.00411	.00395	.00380	.00366
4	.00567	.00540	.00515	.00492	.00470	.00450	.00432	.00414	.00398	.00383
5	.00603	.00574	.00547	.00523	.00500	.00478	.00459	.00440	.00423	.00407
6	.00646	.00615	.00587	.00560	.00536	.00513	.00492	.00472	.00453	.00436
7	.00693	.00660	.00630	.00602	.00576	.00551	.00529	.00508	.00488	.00469
8	.00747	.00712	.00680	.00650	.00622	.00596	.00572	.00549	.00528	.00509
9	.00808	.00771	.00737	.00705	.00675	.00648	.00622	.00598	.00576	.00555
10	.00877	.00838	.00801	.00767	.00736	.00707	.00679	.00654	.00630	.00608
11	.00954	.00912	.00873	.00838	.00804	.00773	.00744	.00717	.00692	.00668
12	.01038	.00994	.00953	.00915	.00880	.00847	.00816	.00788	.00761	.00735
13	.01127	.01081	.01038	.00998	.00960	.00925	.00893	.00862	.00833	.00806
14	.01217	.01168	.01122	.01080	.01040	.01003	.00969	.00937	.00906	.00878
15	.01305	.01253	.01205	.01160	.01118	.01079	.01042	.01008	.00976	.00946
16	.01387	.01333	.01282	.01234	.01190	.01149	.01110	.01074	.01040	.01009
17	.01467	.01409	.01356	.01306	.01259	.01216	.01175	.01137	.01101	.01067
18	.01544	.01484	.01427	.01374	.01325	.01279	.01236	.01195	.01157	.01122
19	.01621	.01557	.01497	.01442	.01390	.01341	.01295	.01253	.01213	.01175
20	.01702	.01634	.01571	.01512	.01457	.01406	.01357	.01312	.01270	.01230
21	.01784	.01713	.01646	.01584	.01526	.01471	.01420	.01372	.01327	.01285
22	.01870	.01794	.01724	.01658	.01596	.01539	.01485	.01434	.01386	.01342
23	.01961	.01881	.01807	.01737	.01672	.01611	.01554	.01500	.01449	.01402
24	.02062	.01977	.01899	.01825	.01756	.01691	.01630	.01573	.01520	.01469
25	.02175	.02085	.02002	.01924	.01851	.01782	.01718	.01657	.01600	.01547
26	.02301	.02207	.02119	.02036	.01958	.01886	.01817	.01753	.01692	.01635
27	.02443	.02343	.02250	.02162	.02080	.02003	.01930	.01862	.01798	.01737
28	.02600	.02495	.02396	.02303	.02216	.02134	.02057	.01985	.01916	.01852
29	.02771	.02660	.02555	.02457	.02365	.02278	.02197	.02120	.02047	.01979
30	.02956	.02838	.02728	.02624	.02526	.02434	.02348	.02266	.02189	.02116
31	.03155	.03031	.02914	.02804	.02701	.02604	.02512	.02425	.02344	.02266
32	.03370	.03239	.03115	.02999	.02890	.02787	.02690	.02598	.02511	.02429
33	.03601	.03463	.03333	.03210	.03095	.02985	.02883	.02785	.02693	.02606
34	.03847	.03701	.03564	.03434	.03312	.03197	.03088	.02985	.02887	.02795

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
35	.04109	.03956	.03811	.03675	.03546	.03424	.03308	.03199	.03096	.02998
36	.04390	.04228	.04076	.03932	.03795	.03667	.03545	.03429	.03320	.03216
37	.04688	.04518	.04358	.04206	.04062	.03926	.03798	.03676	.03560	.03450
38	.05007	.04829	.04660	.04500	.04349	.04205	.04069	.03940	.03818	.03701
39	.05346	.05158	.04981	.04812	.04653	.04502	.04358	.04222	.04092	.03969
40	.05705	.05508	.05321	.05144	.04976	.04817	.04666	.04522	.04385	.04255
41	.06086	.05879	.05683	.05497	.05320	.05152	.04993	.04841	.04697	.04559
42	.06488	.06271	.06066	.05870	.05684	.05508	.05340	.05180	.05028	.04882
43	.06917	.06690	.06474	.06269	.06074	.05888	.05711	.05543	.05382	.05229
44	.07370	.07132	.06906	.06691	.06486	.06291	.06105	.05928	.05759	.05598
45	.07850	.07602	.07365	.07139	.06924	.06719	.06524	.06338	.06160	.05990
46	.08360	.08100	.07852	.07616	.07390	.07176	.06970	.06775	.06587	.06409
47	.08897	.08626	.08367	.08120	.07884	.07659	.07443	.07238	.07041	.06853
48	.09466	.09183	.08912	.08654	.08407	.08172	.07946	.07730	.07524	.07326
49	.10069	.09774	.09492	.09222	.08964	.08717	.08481	.08255	.08038	.07831
50	.10711	.10403	.10109	.09827	.09558	.09300	.09053	.08816	.08589	.08371
51	.11392	.11072	.10765	.10472	.10191	.09921	.09663	.09415	.09178	.08950
52	.12116	.11783	.11464	.11159	.10866	.10585	.10315	.10057	.09808	.09569
53	.12883	.12538	.12206	.11889	.11584	.11291	.11010	.10740	.10481	.10231
54	.13694	.13336	.12992	.12662	.12345	.12041	.11748	.11467	.11196	.10936
55	.14547	.14176	.13820	.13478	.13149	.12832	.12528	.12235	.11953	.11682
56	.15437	.15054	.14685	.14330	.13989	.13661	.13345	.13040	.12747	.12464
57	.16365	.15969	.15588	.15221	.14868	.14527	.14199	.13883	.13578	.13284
58	.17330	.16921	.16528	.16149	.15783	.15431	.15091	.14763	.14447	.14141
59	.18335	.17914	.17508	.17117	.16739	.16375	.16023	.15684	.15356	.15039
60	.19385	.18952	.18534	.18131	.17741	.17365	.17001	.16650	.16311	.15982
61	.20480	.20035	.19605	.19189	.18788	.18400	.18025	.17662	.17311	.16971
62	.21615	.21158	.20717	.20290	.19877	.19477	.19090	.18716	.18354	.18003
63	.22791	.22323	.21870	.21431	.21007	.20596	.20198	.19812	.19439	.19077
64	.24009	.23530	.23066	.22616	.22181	.21758	.21349	.20953	.20568	.20195
65	.25271	.24781	.24306	.23846	.23400	.22967	.22547	.22139	.21744	.21360
66	.26600	.26100	.25615	.25145	.24688	.24245	.23814	.23396	.22990	.22596
67	.27992	.27483	.26989	.26509	.26043	.25590	.25150	.24722	.24306	.23901
68	.29443	.28926	.28423	.27934	.27459	.26997	.26548	.26110	.25685	.25271
69	.30950	.30424	.29914	.29417	.28934	.28463	.28005	.27559	.27125	.26703
70	.32508	.31976	.31459	.30955	.30464	.29986	.29520	.29067	.28625	.28194

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
71	.34122	.33585	.33062	.32552	.32054	.31570	.31097	.30637	.30187	.29749
72	.35790	.35249	.34721	.34205	.33703	.33213	.32734	.32268	.31812	.31367
73	.37505	.36960	.36428	.35909	.35403	.34908	.34425	.33953	.33492	.33042
74	.39258	.38711	.38177	.37655	.37145	.36647	.36160	.35684	.35219	.34764
75	.41039	.40491	.39956	.39432	.38921	.38420	.37931	.37452	.36983	.36525
76	.42843	.42296	.41760	.41236	.40724	.40222	.39731	.39250	.38779	.38318
77	.44668	.44122	.43588	.43065	.42552	.42050	.41559	.41077	.40605	.40143
78	.46510	.45967	.45435	.44914	.44403	.43902	.43411	.42930	.42458	.41995
79	.48365	.47826	.47298	.46780	.46271	.45773	.45284	.44804	.44333	.43871
80	.50226	.49693	.49169	.48655	.48150	.47655	.47169	.46692	.46224	.45763
81	.52090	.51562	.51044	.50536	.50036	.49546	.49064	.48590	.48125	.47668
82	.53951	.53431	.52920	.52418	.51924	.51439	.50963	.50494	.50033	.49580
83	.55802	.55291	.54788	.54294	.53808	.53329	.52859	.52396	.51941	.51493
84	.57640	.57139	.56645	.56159	.55681	.55210	.54747	.54291	.53843	.53401
85	.59459	.58968	.58484	.58008	.57539	.57077	.56623	.56175	.55733	.55298
86	.61254	.60774	.60302	.59836	.59377	.58925	.58479	.58040	.57607	.57180
87	.63019	.62551	.62090	.61635	.61187	.60745	.60309	.59880	.59456	.59038
88	.64751	.64296	.63847	.63405	.62968	.62537	.62112	.61693	.61279	.60871
89	.66444	.66003	.65567	.65137	.64712	.64293	.63880	.63471	.63068	.62670
90	.68094	.67667	.67244	.66827	.66415	.66009	.65607	.65210	.64818	.64431
91	.69699	.69285	.68877	.68473	.68074	.67680	.67291	.66906	.66526	.66150
92	.71254	.70855	.70460	.70071	.69685	.69304	.68928	.68555	.68187	.67823
93	.72753	.72369	.71989	.71613	.71242	.70874	.70510	.70150	.69794	.69442
94	.74200	.73830	.73464	.73103	.72745	.72390	.72040	.71693	.71350	.71010
95	.75591	.75236	.74885	.74538	.74194	.73853	.73516	.73182	.72851	.72524
96	.76920	.76580	.76243	.75909	.75579	.75252	.74928	.74607	.74289	.73974
97	.78188	.77863	.77540	.77220	.76904	.76590	.76279	.75971	.75665	.75363
98	.79399	.79088	.78779	.78473	.78170	.77869	.77571	.77276	.76983	.76693
99	.80555	.80257	.79962	.79670	.79380	.79092	.78807	.78525	.78244	.77966
100	.81641	.81357	.81075	.80796	.80518	.80243	.79971	.79700	.79432	.79165
101	.82683	.82412	.82144	.81877	.81612	.81350	.81089	.80831	.80574	.80320
102	.83652	.83394	.83137	.82882	.82630	.82379	.82130	.81883	.81637	.81394
103	.84624	.84379	.84135	.83892	.83652	.83413	.83176	.82941	.82707	.82475
104	.85519	.85285	.85053	.84822	.84593	.84365	.84139	.83915	.83692	.83470
105	.86400	.86178	.85957	.85737	.85519	.85302	.85087	.84873	.84660	.84449
106	.87523	.87316	.87110	.86905	.86702	.86500	.86299	.86099	.85900	.85703
107	.88806	.88617	.88429	.88242	.88055	.87870	.87686	.87502	.87320	.87139
108	.90958	.90802	.90646	.90490	.90336	.90182	.90028	.89876	.89724	.89573
109	.95372	.95290	.95208	.95126	.95045	.94964	.94883	.94803	.94723	.94643

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
0	.00972	.00961	.00951	.00941	.00932	.00924	.00916	.00908	.00901	.00894
1	.00355	.00345	.00334	.00325	.00316	.00307	.00299	.00292	.00285	.00278
2	.00346	.00334	.00323	.00313	.00303	.00294	.00286	.00278	.00270	.00263
3	.00353	.00340	.00329	.00318	.00307	.00298	.00289	.00280	.00272	.00264
4	.00369	.00356	.00343	.00332	.00321	.00310	.00300	.00291	.00283	.00274
5	.00392	.00377	.00364	.00352	.00340	.00329	.00318	.00308	.00299	.00290
6	.00420	.00405	.00391	.00377	.00365	.00353	.00342	.00331	.00321	.00311
7	.00452	.00436	.00421	.00406	.00393	.00380	.00368	.00357	.00346	.00336
8	.00490	.00473	.00457	.00441	.00427	.00413	.00400	.00388	.00376	.00365
9	.00535	.00517	.00499	.00483	.00467	.00453	.00439	.00426	.00413	.00402
10	.00587	.00567	.00548	.00531	.00514	.00499	.00484	.00470	.00456	.00444
11	.00645	.00624	.00605	.00586	.00568	.00551	.00536	.00521	.00506	.00493
12	.00711	.00689	.00668	.00648	.00629	.00611	.00595	.00579	.00563	.00549
13	.00781	.00757	.00735	.00714	.00694	.00675	.00657	.00640	.00624	.00609
14	.00851	.00826	.00802	.00780	.00759	.00739	.00720	.00702	.00684	.00668
15	.00918	.00891	.00866	.00842	.00820	.00799	.00779	.00759	.00741	.00724
16	.00979	.00950	.00924	.00899	.00875	.00853	.00832	.00811	.00792	.00774
17	.01035	.01006	.00978	.00951	.00926	.00902	.00880	.00859	.00838	.00819
18	.01088	.01057	.01027	.00999	.00973	.00948	.00924	.00901	.00880	.00860
19	.01139	.01106	.01075	.01045	.01017	.00990	.00965	.00942	.00919	.00898
20	.01192	.01157	.01124	.01092	.01063	.01035	.01008	.00983	.00959	.00936
21	.01245	.01208	.01173	.01139	.01108	.01078	.01050	.01023	.00998	.00974
22	.01300	.01260	.01222	.01187	.01154	.01122	.01092	.01064	.01037	.01011
23	.01357	.01315	.01275	.01238	.01202	.01168	.01137	.01106	.01078	.01051
24	.01422	.01377	.01334	.01294	.01257	.01221	.01187	.01155	.01124	.01095
25	.01496	.01448	.01403	.01361	.01320	.01282	.01246	.01212	.01180	.01149
26	.01582	.01531	.01483	.01438	.01395	.01354	.01316	.01279	.01244	.01211
27	.01680	.01626	.01575	.01527	.01481	.01437	.01396	.01357	.01320	.01285
28	.01791	.01734	.01679	.01628	.01579	.01533	.01489	.01447	.01408	.01370
29	.01914	.01853	.01795	.01740	.01688	.01639	.01592	.01548	.01505	.01465
30	.02048	.01982	.01921	.01862	.01807	.01754	.01704	.01657	.01612	.01569
31	.02193	.02124	.02058	.01996	.01937	.01881	.01828	.01777	.01729	.01683
32	.02351	.02278	.02208	.02142	.02079	.02019	.01962	.01908	.01857	.01808
33	.02523	.02445	.02371	.02300	.02234	.02170	.02109	.02052	.01997	.01944
34	.02707	.02624	.02545	.02470	.02399	.02331	.02267	.02205	.02146	.02091

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

	Interest Rate									
AGE	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
35	.02905	.02817	.02733	.02653	.02577	.02505	.02436	.02371	.02308	.02249
36	.03117	.03024	.02935	.02850	.02769	.02693	.02619	.02550	.02483	.02419
37	.03345	.03246	.03151	.03061	.02976	.02894	.02816	.02742	.02671	.02603
38	.03590	.03485	.03385	.03289	.03198	.03112	.03029	.02950	.02874	.02802
39	.03852	.03740	.03634	.03533	.03436	.03344	.03256	.03172	.03092	.03015
40	.04131	.04013	.03900	.03793	.03690	.03593	.03499	.03410	.03324	.03242
41	.04428	.04303	.04184	.04070	.03962	.03858	.03759	.03664	.03573	.03486
42	.04744	.04612	.04486	.04366	.04250	.04140	.04035	.03934	.03838	.03745
43	.05083	.04943	.04810	.04683	.04561	.04444	.04333	.04226	.04123	.04025
44	.05443	.05296	.05155	.05021	.04892	.04768	.04650	.04537	.04428	.04324
45	.05827	.05672	.05523	.05381	.05245	.05114	.04989	.04869	.04754	.04643
46	.06237	.06074	.05917	.05767	.05623	.05485	.05352	.05225	.05103	.04986
47	.06673	.06500	.06335	.06177	.06025	.05879	.05739	.05605	.05475	.05351
48	.07137	.06955	.06781	.06614	.06454	.06300	.06152	.06010	.05874	.05742
49	.07632	.07441	.07258	.07082	.06913	.06750	.06595	.06444	.06300	.06161
50	.08162	.07962	.07769	.07584	.07407	.07236	.07071	.06913	.06760	.06614
51	.08731	.08520	.08318	.08124	.07937	.07757	.07583	.07416	.07256	.07101
52	.09340	.09119	.08907	.08703	.08507	.08317	.08135	.07959	.07790	.07627
53	.09991	.09760	.09538	.09324	.09118	.08919	.08728	.08543	.08365	.08193
54	.10685	.10443	.10211	.09987	.09771	.09562	.09361	.09167	.08980	.08799
55	.11420	.11168	.10925	.10690	.10464	.10246	.10035	.09832	.09635	.09445
56	.12191	.11928	.11675	.11430	.11193	.10965	.10745	.10531	.10325	.10126
57	.13001	.12727	.12462	.12207	.11960	.11721	.11491	.11268	.11052	.10843
58	.13846	.13561	.13286	.13020	.12762	.12513	.12273	.12040	.11814	.11595
59	.14732	.14436	.14150	.13873	.13605	.13346	.13095	.12851	.12616	.12388
60	.15665	.15358	.15060	.14772	.14494	.14224	.13962	.13709	.13463	.13225
61	.16642	.16324	.16016	.15717	.15428	.15147	.14875	.14611	.14355	.14107
62	.17663	.17333	.17014	.16704	.16404	.16113	.15830	.15556	.15290	.15031
63	.18726	.18385	.18055	.17734	.17423	.17121	.16828	.16544	.16267	.15999
64	.19833	.19481	.19140	.18809	.18487	.18175	.17871	.17576	.17289	.17010
65	.20987	.20624	.20273	.19931	.19598	.19275	.18961	.18656	.18358	.18069
66	.22213	.21840	.21478	.21125	.20783	.20449	.20125	.19809	.19501	.19202
67	.23508	.23125	.22753	.22390	.22037	.21694	.21360	.21034	.20716	.20407
68	.24868	.24476	.24094	.23722	.23359	.23006	.22662	.22327	.22000	.21681
69	.26291	.25889	.25498	.25117	.24745	.24383	.24030	.23685	.23349	.23020
70	.27773	.27364	.26964	.26574	.26194	.25823	.25461	.25107	.24762	.24425

Table S
Based on Life Table 2000CM
Single Life Remainder Factors
Applicable On or After May 1, 2009

Interest Rate

AGE	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
71	.29321	.28904	.28496	.28099	.27710	.27331	.26961	.26599	.26246	.25900
72	.30933	.30508	.30094	.29689	.29294	.28907	.28530	.28160	.27799	.27446
73	.32602	.32171	.31751	.31340	.30938	.30545	.30160	.29784	.29416	.29056
74	.34319	.33884	.33458	.33042	.32634	.32236	.31845	.31463	.31089	.30723
75	.36076	.35637	.35207	.34786	.34374	.33970	.33575	.33188	.32808	.32437
76	.37867	.37425	.36991	.36567	.36151	.35744	.35344	.34953	.34569	.34192
77	.39690	.39245	.38810	.38383	.37964	.37554	.37151	.36756	.36369	.35989
78	.41541	.41096	.40659	.40231	.39811	.39398	.38993	.38596	.38206	.37823
79	.43418	.42973	.42536	.42107	.41686	.41272	.40866	.40467	.40075	.39691
80	.45311	.44868	.44432	.44003	.43582	.43169	.42763	.42363	.41971	.41585
81	.47219	.46777	.46343	.45916	.45497	.45084	.44679	.44280	.43888	.43502
82	.49135	.48696	.48265	.47841	.47424	.47014	.46610	.46213	.45822	.45437
83	.51052	.50618	.50191	.49771	.49357	.48950	.48549	.48154	.47766	.47383
84	.52966	.52537	.52115	.51700	.51291	.50887	.50490	.50099	.49714	.49334
85	.54870	.54448	.54032	.53622	.53218	.52820	.52428	.52041	.51660	.51284
86	.56759	.56344	.55935	.55532	.55135	.54742	.54356	.53974	.53598	.53227
87	.58626	.58219	.57818	.57422	.57031	.56646	.56266	.55891	.55521	.55155
88	.60468	.60070	.59677	.59290	.58907	.58529	.58157	.57788	.57425	.57066
89	.62277	.61888	.61505	.61126	.60753	.60383	.60018	.59658	.59302	.58950
90	.64048	.63670	.63296	.62927	.62563	.62202	.61846	.61494	.61146	.60803
91	.65778	.65411	.65048	.64689	.64334	.63983	.63636	.63293	.62954	.62619
92	.67462	.67106	.66754	.66406	.66061	.65720	.65383	.65050	.64720	.64393
93	.69094	.68749	.68408	.68071	.67737	.67406	.67079	.66756	.66435	.66118
94	.70673	.70340	.70011	.69685	.69362	.69042	.68725	.68412	.68102	.67794
95	.72199	.71878	.71560	.71246	.70934	.70625	.70319	.70016	.69716	.69419
96	.73662	.73353	.73047	.72743	.72443	.72145	.71850	.71557	.71268	.70981
97	.75063	.74766	.74471	.74180	.73890	.73604	.73319	.73038	.72758	.72482
98	.76405	.76120	.75837	.75557	.75279	.75003	.74730	.74459	.74190	.73923
99	.77690	.77417	.77146	.76877	.76610	.76345	.76083	.75822	.75564	.75308
100	.78901	.78639	.78379	.78121	.77866	.77612	.77360	.77110	.76862	.76616
101	.80067	.79816	.79568	.79321	.79076	.78832	.78591	.78351	.78114	.77877
102	.81152	.80912	.80674	.80438	.80203	.79970	.79738	.79508	.79280	.79054
103	.82245	.82016	.81789	.81563	.81339	.81116	.80895	.80676	.80458	.80241
104	.83250	.83031	.82814	.82599	.82384	.82171	.81960	.81750	.81541	.81334
105	.84239	.84030	.83823	.83617	.83412	.83209	.83006	.82806	.82606	.82407
106	.85507	.85311	.85117	.84924	.84733	.84542	.84352	.84164	.83976	.83790
107	.86958	.86779	.86600	.86422	.86246	.86070	.85895	.85721	.85548	.85376
108	.89422	.89272	.89123	.88974	.88826	.88679	.88533	.88386	.88241	.88096
109	.94563	.94484	.94405	.94326	.94248	.94170	.94092	.94014	.93937	.93860

Table 2000CM

Age x	l_x	Age x	l_x	Age x	l_x
0	100000	37	96921	74	66882
1	99305	38	96767	75	64561
2	99255	39	96600	76	62091
3	99222	40	96419	77	59476
4	99197	41	96223	78	56721
5	99176	42	96010	79	53833
6	99158	43	95782	80	50819
7	99140	44	95535	81	47694
8	99124	45	95268	82	44475
9	99110	46	94981	83	41181
10	99097	47	94670	84	37837
11	99085	48	94335	85	34471
12	99073	49	93975	86	31114
13	99057	50	93591	87	27799
14	99033	51	93180	88	24564
15	98998	52	92741	89	21443
16	98950	53	92270	90	18472
17	98891	54	91762	91	15685
18	98822	55	91211	92	13111
19	98745	56	90607	93	10773
20	98664	57	89947	94	8690
21	98577	58	89225	95	6871
22	98485	59	88441	96	5315
23	98390	60	87595	97	4016
24	98295	61	86681	98	2959
25	98202	62	85691	99	2122
26	98111	63	84620	100	1477
27	98022	64	83465	101	997
28	97934	65	82224	102	650
29	97844	66	80916	103	410
30	97750	67	79530	104	248
31	97652	68	78054	105	144
32	97549	69	76478	106	81
33	97441	70	74794	107	43
34	97324	71	73001	108	22
35	97199	72	71092	109	11
36	97065	73	69056	110	0

(e) *Effective/applicability date.* This section applies on and after May 1, 2009.

§ 20.2031–7T [Removed]

■ **Par. 14.** Section 20.2031–7T is removed.

§ 20.2031–7A [Amended]

■ **Par. 14A.** Section 20.2031–7A(f)(1) is amended by removing ''§ 20.2031–7T(d)'' from the first sentence and adding ''§ 20.2031–7(d)'' in its place.

■ **Par. 15.** Section 20.2055–2 is amended by:

■ 1. Revising the heading in paragraph (e)(3) and revising paragraphs (e)(3)(iii) and (f)(4).

■ 2. Adding paragraph (f)(6).

The revisions and addition read as follows:

§ 20.2055–2 Transfers not exclusively for charitable purposes.

* * * * *

(e) * * *

(3) *Effective/applicability date.* * * *

(iii) The rule in paragraphs (e)(2)(vi)(*a*) and (e)(2)(vii)(*a*) of this section that guaranteed annuity interests or unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals is generally effective in the case of transfers pursuant to wills and revocable trusts when the decedent dies on or after April 4, 2000. Two exceptions from the application of this rule in paragraphs (e)(2)(vi)(*a*) and(e)(2)(vii)(*a*) of this section are provided in the case of transfers pursuant to a will or revocable trust executed before April 4, 2000. One exception is for a decedent who dies on or before July 5, 2001, without having republished the will (or amended the trust) by codicil or otherwise. The other exception is for a decedent who was on April 4, 2000, under a mental disability that prevented a change in the disposition of the decedent's property, and who either does not regain competence to dispose of such property before the date of death, or dies prior to the later of 90 days after the date on which the decedent first regains competence, or July 5, 2001, without having republished the will (or amended the trust) by codicil or otherwise. If a guaranteed annuity interest or unitrust interest created pursuant to a will or revocable trust of a decedent dying on or after April 4, 2000, uses an individual other than one permitted in paragraphs (e)(2)(vi)(*a*) and (e)(2)(vii)(*a*) of this section, and the interest does not qualify for this transitional relief, the interest may be reformed into a lead interest payable for a specified term of years. The term of years is determined by taking the factor for valuing the annuity or unitrust interest for the named individual measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer on or after May 1, 2009, assuming an interest rate of 7.4 percent under section 7520, the annuity factor from column 1 of Table S(7.4), contained in IRS Publication 1457, ''Actuarial Valuations Version 3A'', for the life of an individual age 40 is 12.1519 (1.000000 minus .10076, divided by .074). Based on Table B(7.4), contained in Publication 1457, ''Actuarial Valuations Version 3A'', the factor 12.1519 corresponds to a term of years between 32 and 33 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 33 years. A judicial reformation must be commenced prior to the later of July 5, 2001, or the date prescribed by section 2055(e)(3)(C)(iii). Any judicial reformation must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced. In the alternative, if a court, in a proceeding that is commenced on or before July 5, 2001, declares any transfer made pursuant to a will or revocable trust where the decedent dies on or after April 4, 2000, and on or before March 6, 2001, null and void ab initio, the Internal Revenue Service will treat such transfers in a manner similar to that described in section 2055(e)(3)(J).

* * * * *

(f) * * *

(4) *Other decedents.* The present value of an interest not described in paragraph (f)(2) of this section is to be determined under § 20.2031–7(d) in the case of decedents where the valuation date of the gross estate is on or after May 1, 2009, or under § 20.2031–7A in the case of decedents where the valuation date of the gross estate is before May 1, 2009.

* * * * *

(6) *Effective/applicability date.* Paragraphs (e)(3)(iii) and (f)(4) of this section apply on and after May 1, 2009.

§ 20.2055–2T [Removed]

■ **Par. 16.** Section 20.2055–2T is removed.

■ **Par. 17.** Section 20.2056A–4 is amended by:

■ 1. Revising paragraph (c)(4)(ii)(B) and *Example 4* of paragraph (d).

■ 2. Adding paragraph (e).

The revisions and addition read as follows:

§ 20.2056A–4 Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) The total present value of the annuity or other payment is the present value of the nonassignable annuity or other payment as of the date of the decedent's death, determined in accordance with the interest rates and mortality data prescribed by section 7520. The expected annuity term is the number of years that would be required for the scheduled payments to exhaust a hypothetical fund equal to the present value of the scheduled payments. This is determined by first dividing the total present value of the payments by the annual payment. From the quotient so obtained, the expected annuity term is derived by identifying the term of years that corresponds to the annuity factor equal to the quotient. This is determined by using column 1 of Table B, for the applicable interest rate, contained in Publication 1457, ''Actuarial Valuations Version 3A''. A copy of this publication is available, at no charge, electronically via the IRS Internet site at *http://www.irs.gov.* If the quotient obtained falls between two terms, the longer term is used.

* * * * *

(d) * * *

Example 4. Computation of corpus portion of annuity payment. (i) At the time of D's death on or after May 1, 2009, D is a participant in an employees' pension plan described in section 401(a). On D's death, D's spouse S, a resident of the United States, becomes entitled to receive a survivor's annuity of $72,000 per year, payable monthly, for life. At the time of D's death, S is age 60. Assume that under section 7520, the appropriate discount rate to be used for valuing annuities in the case of this decedent is 6.0 percent. The annuity factor at 6.0 percent for a person age 60 is 11.0625 (1.000000 minus .33625, divided by .06). The adjustment factor at 6.0 percent in Table K for monthly payments is 1.0272. Accordingly, the right to receive $72,000 per year on a monthly basis is equal to the right to receive $73,958.40 ($72,000 × 1.0272) on an annual basis.

(ii) The corpus portion of each annuity payment received by S is determined as follows. The first step is to determine the annuity factor for the number of years that

would be required to exhaust a hypothetical fund that has a present value and a payout corresponding to S 's interest in the payments under the plan, determined as follows:

(A) Present value of S 's annuity: $73,958.40 × 11.0625 = $818,164.80.

(B) Annuity Factor for Expected Annuity Term: $818,164.80/$73,958.40 = 11.0625.

(iii) The second step is to determine the number of years that would be required for S 's annuity to exhaust a hypothetical fund of $818,164.80. The term certain annuity factor of 11.0625 falls between the annuity factors for 18 and 19 years in a 6.0 percent term certain annuity table (Column 1 of Table B, Publication 1457 Actuarial Valuations Version 3A, which may be obtained on the IRS Internet site). Accordingly, the expected annuity term is 19 years.

(iv) The third step is to determine the corpus amount by dividing the expected term of 19 years into the present value of the hypothetical fund as follows:

(A) Corpus amount of annual payment: $818,164.80/19 = $43,061.31.

(B) [Reserved].

(v) In the fourth step, the corpus portion of each annuity payment is determined by dividing the corpus amount of each annual payment by the annual annuity payment (adjusted for payments more frequently than annually as in (i) of this *Example 4*) as follows:

(A) Corpus portion of each annuity payment: $43,061.31/$73,958.40 = .58.

(B) [Reserved].

(vi) Accordingly, 58 percent of each payment to S is deemed to be a distribution of corpus. A marital deduction is allowed for $818,164.80, the present value of the annuity as of D's date of death, if either: S agrees to roll over the corpus portion of each payment to a QDOT and the executor files the Information Statement described in paragraph (c)(5) of this section and the Roll Over Agreement described in paragraph (c)(7) of this section; or S agrees to pay the tax due on the corpus portion of each payment and the executor files the Information Statement described in paragraph (c)(5) of this section and the Payment Agreement described in paragraph (c)(6) of this section.

* * * * *

(e) *Effective/applicability date.* Paragraph (c)(4)(ii)(B) and *Example 4* in paragraph (d) of this section are applicable with respect to decedents dying on or after May 1, 2009.

§ 20.2056A–4T [Removed]

■ **Par. 18.** Section 20.2056A–4T is removed.

■ **Par. 19.** Section 20.7520–1 is amended by revising the section heading and by revising paragraphs (a)(1), (a)(2), (b)(2), (c)(1), (c)(2), and (d) to read as follows:

§ 20.7520–1 Valuation of annuities, unitrust interests, interests for life or terms of years, and remainder or reversionary interests.

(a) *General actuarial valuations.* (1) Except as otherwise provided in this section and in § 20.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), in the case of estates of decedents with valuation dates after April 30, 1989, the fair market value of annuities, interests for life or for a term of years (including unitrust interests), remainders, and reversions is their present value determined under this section. See § 20.2031–7(d) (and, for periods prior to May 1, 2009, § 20.2031–7A) for the computation of the value of annuities, unitrust interests, life estates, terms for years, remainders, and reversions, other than interests described in paragraphs (a)(2) and (a)(3) of this section.

(2) In the case of a transfer to a pooled income fund, see § 1.642(c)–6(e) of this chapter (or, for periods prior to May 1, 2009, § 1.642(c)–6A) with respect to the valuation of the remainder interest.

* * * * *

(b) * * *

(2) *Mortality component.* The mortality component reflects the mortality data most recently available from the United States census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised and the revised mortality component tables will be published in the regulations at that time. For decedent's estates with valuation dates on or after May 1, 2009, the mortality component table (Table 2000CM) is contained in § 20.2031–7(d)(7). See § 20.2031–7A for mortality component tables applicable to decedent's estates with valuation dates before May 1, 2009.

(c) * * *

(1) *Regulation sections containing tables with interest rates between 0.2 and 14 percent for valuation dates on or after May 1, 2009.* Section 1.642(c)–6(e)(6) of this chapter contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in § 1.642(c)–5. See § 1.642(c)–6A for single life remainder factors applicable to valuation dates before May 1, 2009. Section 1.664–4(e)(6) contains Table F (payout factors) and Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years). Section 1.664–4(e)(7) contains Table U(1) (unitrust single life remainder factors). These tables are used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in § 1.664–3. See § 1.664–4A for unitrust single life remainder factors applicable to valuation dates before May 1, 2009. Section 20.2031–7(d)(6) contains Table B (actuarial factors used in determining the present value of an interest for a term of years), Table K (annuity end-of-interval adjustment factors), and Table J (term certain annuity beginning-of-interval adjustment factors). Section 20.2031–7(d)(7) contains Table S (single life remainder factors), and Table 2000CM (mortality components). These tables are used in determining the present value of annuities, life estates, remainders, and reversions. See § 20.2031–7A for single life remainder factors applicable to valuation dates before May 1, 2009.

(2) *Internal Revenue Service publications containing tables with interest rates between 0.2 and 22 percent for valuation dates on or after May 1, 2009.* The following documents are available, at no charge, electronically via the IRS Internet site at *http://www.irs.gov:*

(i) Internal Revenue Service Publication 1457, ''Actuarial Valuations Version 3A'' (2009). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors may also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 of this chapter and a pooled income fund as defined in § 1.642(c)–5.

(ii) Internal Revenue Service Publication 1458, ''Actuarial Valuations Version 3B'' (2009). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3 of this chapter.

(iii) Internal Revenue Service Publication 1459, ''Actuarial Valuations Version 3C'' (2009). This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12 of this chapter.

(d) *Effective/applicability date.* This section applies on and after May 1, 2009.

§ 20.7520–1T [Removed]

■ **Par. 20.** Section 20.7520–1T is removed.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 21.** The authority citation for part 25 is amended by removing entries for §§ 25.2512–5T and 25.7520–1T to read as follows:

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

■ **Par. 22.** Section 25.2512–0 is amended by removing the entry for § 25.2512–5T from the table.

■ **Par. 23.** Section 25.2512–5 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 25.2512–5 Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.

* * * * *

(c) *Actuarial valuations.* The present value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift on or after May 1, 2009, is determined under paragraph (d) of this section. The present value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift before May 1, 2009, is determined under the following sections:

Transfers		Applicable regulations
After	Before	
—	01–01–52	25.2512–5A(a).
12–31–51	01–01–71	25.2512–5A(b).
12–31–70	12–01–83	25.2512–5A(c).
11–30–83	05–01–89	25.2512–5A(d).
04–30–89	05–01–99	25.2512–5A(e).
04–30–99	05–01–09	25.2512–5A(f).

(d) *Actuarial valuations on or after May 1, 2009*—(1) *In general.* Except as otherwise provided in paragraph (b) of this section and § 25.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances), if the valuation date for the gift is on or after May 1, 2009, the fair market value of annuities, life estates, terms of years, remainders, and reversions transferred on or after May 1, 2009, is the present value of such interests determined under paragraph (d)(2) of this section and by use of standard or special section 7520 actuarial factors. These factors are derived by using the appropriate section 7520 interest rate and, if applicable, the mortality component for the valuation date of the interest that is being valued. See §§ 25.7520–1 through 25.7520–4. The fair market value of a qualified annuity interest described in section 2702(b)(1) and a qualified unitrust interest described in section 2702(b)(2) is the present value of such interests determined under § 25.7520–1(c).

(2) *Specific interests.* When the donor transfers property in trust or otherwise and retains an interest therein, generally, the value of the gift is the value of the property transferred less the value of the donor's retained interest. However, if the donor transfers property after October 8, 1990, to or for the benefit of a member of the donor's family, the value of the gift is the value of the property transferred less the value of the donor's retained interest as determined under section 2702. If the donor assigns or relinquishes an annuity, life estate, remainder, or reversion that the donor holds by virtue of a transfer previously made by the donor or another, the value of the gift is the value of the interest transferred. However, see section 2519 for a special rule in the case of the assignment of an income interest by a person who received the interest from a spouse.

(i) *Charitable remainder trusts.* The fair market value of a remainder interest in a pooled income fund, as defined in § 1.642(c)–5 of this chapter, is its value determined under § 1.642(c)–6(e) (see § 1.642(c)–6A for certain prior periods). The fair market value of a remainder interest in a charitable remainder annuity trust, as described in § 1.664–2(a), is its present value determined under § 1.664–2(c). The fair market value of a remainder interest in a charitable remainder unitrust, as defined in § 1.664–3, is its present value determined under § 1.664–4(e). The fair market value of a life interest or term for years in a charitable remainder unitrust is the fair market value of the property as of the date of transfer less the fair market value of the remainder interest, determined under § 1.664–4(e)(4) and (e)(5).

(ii) *Ordinary remainder and reversionary interests.* If the interest to be valued is to take effect after a definite number of years or after the death of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate remainder interest actuarial factor (that corresponds to the applicable section 7520 interest rate and remainder interest period) in Table B (for a term certain) or in Table S (for one measuring life), as the case may be. Table B is contained in § 20.2031–7(d)(6) of this chapter and Table S (for one measuring life when the valuation date is on or after May 1, 2009) is included in § 20.2031–7(d)(7) and Internal Revenue Service Publication 1457. See § 20.2031–7A containing Table S for valuation of interests before May 1, 2009. For information about obtaining actuarial factors for other types of remainder interests, see paragraph (d)(4) of this section.

(iii) *Ordinary term-of-years and life interests.* If the interest to be valued is the right of a person to receive the income of certain property, or to use certain nonincome-producing property, for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate term-of-years or life interest actuarial factor (that corresponds to the applicable section 7520 interest rate and term-of-years or life interest period). Internal Revenue Service Publication 1457 includes actuarial factors for a remainder interest after a term of years in Table B and after the life of one individual in Table S (for one measuring life when the valuation date is on or after May 1, 2009). However, term-of-years and life interest actuarial factors are not included in Table B in § 20.2031–7(d)(6) of this chapter or Table S in § 20.2031–7(d)(7) (or in § 20.2031–7A). If Internal Revenue Service Publication 1457 (or any other reliable source of term-of-years and life interest actuarial factors) is not conveniently available, an actuarial factor for the interest may be derived mathematically. This actuarial factor may be derived by subtracting the correlative remainder factor (that corresponds to the applicable section 7520 interest rate) in Table B (for a term of years) in § 20.2031–7(d)(6) or in Table S (for the life of one individual) in § 20.2031–7(d)(7), as the case may be, from 1.000000. For information about obtaining actuarial factors for other types of term-of-years and life interests, see paragraph (d)(4) of this section.

(iv) *Annuities.* (A) If the interest to be valued is the right of a person to receive an annuity that is payable at the end of each year for a term of years or for the

life of one individual, the present value of the interest is computed by multiplying the aggregate amount payable annually by the appropriate annuity actuarial factor (that corresponds to the applicable section 7520 interest rate and annuity period). Internal Revenue Service Publication 1457 includes actuarial factors in Table B (for a remainder interest after an annuity payable for a term of years) and in Table S (for a remainder interest after an annuity payable for the life of one individual when the valuation date is on or after May 1, 2009). However, annuity actuarial factors are not included in Table B in § 20.2031–7(d)(6) of this chapter or Table S in § 20.2031–7(d)(7) (or in § 20.2031–7A). If Internal Revenue Service Publication 1457 (or any other reliable source of annuity actuarial factors) is not conveniently available, an annuity factor for a term of years or for one life may be derived mathematically. This annuity factor may be derived by subtracting the applicable remainder factor (that corresponds to the applicable section 7520 interest rate and annuity period) in Table B (in the case of a term-of-years annuity) in § 20.2031–7(d)(6) or in Table S (in the case of a one-life annuity) in § 20.2031–7(d)(7), as the case may be, from 1.000000 and then dividing the result by the applicable section 7520 interest rate expressed as a decimal number. See § 20.2031–7(d)(2)(iv) for an example that illustrates the computation of the present value of an annuity.

(B) If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods, the product obtained by multiplying the annuity factor by the aggregate amount payable annually is then multiplied by the applicable adjustment factor set forth in Table K in § 20.2031–7(d)(6) at the appropriate interest rate component for payments made at the end of the specified periods. The provisions of this paragraph (d)(2)(iv)(B) are illustrated by the following example:

Example. In July of a year after 2009 but before 2019, the donor agreed to pay the annuitant the sum of $10,000 per year, payable in equal semiannual installments at the end of each period. The semiannual installments are to be made on each December 31st and June 30th. The annuity is payable until the annuitant's death. On the date of the agreement, the annuitant is 68 years and 5 months old. The donee annuitant's age is treated as 68 for purposes of computing the present value of the annuity. The section 7520 rate on the date of the agreement is 6.6 percent. Under Table S in § 20.2031–7(d)(7), the factor at 6.6 percent for determining the present value of a remainder interest payable at the death of an individual aged 68 is .42001. Converting the remainder factor to an annuity factor, as described above, the annuity factor for determining the present value of an annuity transferred to an individual age 68 is 8.7877 (1.000000 minus .42001 divided by .066). The adjustment factor from Table K in § 20.2031–7(d)(6) in the column for payments made at the end of each semiannual period at the rate of 6.6 percent is 1.0162. The aggregate annual amount of the annuity, $10,000, is multiplied by the factor 8.7877 and the product is multiplied by 1.0162. The present value of the donee's annuity is, therefore, $89,300.61 ($10,000 × 8.7877 × 1.0162).

(C) If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for a term of years, the value of the annuity is computed by multiplying the aggregate amount payable annually by the annuity factor described in paragraph (d)(2)(iv)(A) of this section; and the product so obtained is then multiplied by the adjustment factor in Table J in § 20.2031–7(d)(6) of this chapter at the appropriate interest rate component for payments made at the beginning of specified periods. If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for one or more lives, the value of the annuity is the sum of the first payment and the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in paragraph (d)(2)(iv)(B) of this section.

(v) *Annuity and unitrust interests for a term of years or until the prior death of an individual*—(A) *Annuity interests.* The present value of an annuity interest that is payable until the earlier to occur of the lapse of a specific number of years or the death of an individual may be computed with values from the tables in §§ 20.2031–7(d)(6) and 20.2031–7(d)(7) of this chapter as described in the following example:

Example. The donor transfers $100,000 into a trust early in 2010, and retains the right to receive an annuity from the trust in the amount of $6,000 per year, payable in equal semiannual installments at the end of each period. The semiannual installments are to be made on each June 30th and December 31st.

The annuity is payable for 10 years or until the donor's prior death. At the time of the transfer, the donor is 59 years and 6 months old. The donor's age is deemed to be 60 for purposes of computing the present value of the retained annuity. If the section 7520 rate for the month in which the transfer occurs in 5.8 percent, the present value of the donor's retained interest would be $42,575.65, determined as follows:

TABLE S value at 5.8 percent, age 60	34656
TABLE S value at 5.8 percent, age 70	.49025
TABLE 2000CM value at age 70	74794
TABLE 2000CM value at age 60	87595
TABLE B value at 5.8 percent, 10 years	569041
TABLE K value at 5.8 percent	1.0143

Factor for donor's retained interest at 5.8 percent:

$$\frac{(1.00000 - .34656) - (.569041 \text{ X } (74794/87595) \text{ X } (1.00000 - .49025))}{.058} = 6.9959$$

Present value of donor's retained interest:

($6,000 × 6.9959 × 1.0143) .. $42,575.65

(B) *Unitrust interests.* The present value of a unitrust interest that is payable until the earlier to occur of the lapse of a specific number of years or the death of an individual may be computed with values from the tables in §§ 1.664–4(e)(6) and 1.664–4(e)(7) of this chapter as described in the following example:

Example. The donor who, as of the nearest birthday, is 60 years old, transfers $100,000 to a unitrust on January 1st of a year after 2009 but before 2019. The trust instrument requires that each year the trust pay to the donor, in equal semiannual installments on June 30th and December 31st, 6 percent of the fair market value of the trust assets, valued as of January 1st each year, for 10 years or until the prior death of the donor. The section 7520 rate for the January in which the transfer occurs is 6.6 percent. Under Table F(6.6) in § 1.664–4(e)(6), the appropriate adjustment factor is .953317 for semiannual payments payable at the end of the semiannual period. The adjusted payout rate is 5.720 percent (6% × .953317). The present value of the donor's retained interest is $41,920.00 determined as follows:

TABLE U(1) value at 5.6 percent, age 60	.33970
TABLE U(1) value at 5.6 percent, age 70	.48352
TABLE 2000CM value at age 70	74794
TABLE 2000CM value at age 60	87595
TABLE D value at 5.6 percent, 10 years	.561979

Factor for donor's retained interest at 5.6 percent:

(1.000000 − .33970) − (.561979 × (74794/87595) × (1.000000 − .48352)) = .41247

TABLE U(1) value at 5.8 percent, age 60 ..... .32846

TABLE U(1) value at 5.8 percent, age 70 ..... .47241

TABLE 2000CM value at age 70 74794

TABLE 2000CM value at age 60 87595

TABLE D value at 5.8 percent, 10 years ..... .550185

Factor for donor's retained interest at 5.8 percent:

(1.000000 - .32846) - (.550185 X (74974/87595) X (1.000000 - .47241)) = .42369

Difference .. .01122

Interpolation adjustment:

$$\frac{5.720\% - 5.6\%}{0.2\%} = \frac{x}{.01122}$$

x = .00673

Factor at 5.6 percent, age 60 ..... .41247
Plus: Interpolation adjustment ..... .00673
Interpolated Factor ..... .41920

Present value of donor's retained interest:

($100,000 X .41920) ..... $41,920.00.

(3) *Transitional rule.* If the valuation date of a transfer of property by gift is on or after May 1, 2009, and before July 1, 2009, the fair market value of the interest transferred is determined by use of the section 7520 interest rate for the month in which the valuation date occurs (see §§ 25.7520–1(b) and 25.7520–2(a)(2)) and the appropriate actuarial tables under either § 20.2031–7(d)(7) or § 20.2031–7A(f)(4) of this chapter, at the option of the donor. However, with respect to each individual transaction and with respect to all transfers occurring on the valuation date, the donor must use the same actuarial tables (for example, gift and income tax charitable deductions with respect to the same transfer must be determined based on the same tables, and all transfers made on the same date must be valued based on the same tables).

(4) *Publications and actuarial computations by the Internal Revenue Service.* Many standard actuarial factors not included in § 20.2031–7(d)(6) or § 20.2031–7(d)(7) of this chapter are included in Internal Revenue Service Publication 1457, ''Actuarial Valuations Version 3A'' (2009). Internal Revenue Service Publication 1457 also includes examples that illustrate how to compute many special factors for more unusual situations. A copy of this publication is available, at no charge, electronically via the IRS Internet site at *http://www.irs.gov.* If a special factor is required in the case of a completed gift, the Internal Revenue Service may furnish the factor to the donor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts including a statement of the date of birth for each measuring life, the date of the gift, any other applicable dates, and a copy of the will, trust, or other relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(e) *Effective/applicability date.* This section applies on and after May 1, 2009.

§ 25.2512–5T [Removed]

■ **Par. 24.** Section 25.2512–5T is removed.

§ 25.2512–5A [Amended]

■ **Par. 24A.** Section 25.2512–5A(f)(1) is amended by removing ''§ 25.2512–5T(d)'' from the first sentence and adding ''§ 25.2512–5(d)'' in its place.

■ **Par. 25.** Section 25.2522(c)–3 is amended by revising paragraph (e) to read as follows:

§ 25.2522(c)–3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

* * * * *

(e) *Effective/applicability date.* This section applies only to gifts made after July 31, 1969. In addition, the rule in paragraphs (c)(2)(vi)(*a*) and (c)(2)(vii)(*a*) of this section that guaranteed annuity interests or unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals applies to transfers made on or after April 4, 2000. If a transfer is made on or after April 4, 2000, that uses an individual other than one permitted in paragraphs (c)(2)(vi)(*a*) and (c)(2)(vii)(*a*) of this section, the interest may be reformed into a lead interest payable for a specified term of years. The term of years is determined by taking the factor for valuing the annuity or unitrust interest for the named individual measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the

time of the transfer on or after May 1, 2009 (the effective date of Table S), assuming an interest rate of 7.4 percent under section 7520, the annuity factor from column 1 of Table S(7.4), contained in IRS Publication 1457, Actuarial Valuations Version 3A, for the life of an individual age 40 is 12.1519 (1 − .10076/.074). Based on Table B(7.4), contained in Publication 1457, ''Actuarial Valuations Version 3A'', the factor 12.1519 corresponds to a term of years between 32 and 33 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 33 years. A judicial reformation must be commenced prior to October 15th of the year following the year in which the transfer is made and must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced. In the alternative, if a court, in a proceeding that is commenced on or before July 5, 2001, declares any transfer, made on or after April 4, 2000, and on or before March 6, 2001, null and void ab initio, the Internal Revenue Service will treat such transfers in a manner similar to that described in section 2055(e)(3)(J).

§ 25.2522(c)–3T [Removed]

■ **Par. 26.** Section 25.2522(c)–3T is removed.

■ **Par. 27.** Section 25.7520–1 is amended by revising the section heading and by revising paragraphs (a)(1), (a)(2), (b)(2), (c)(1), (c)(2), and (d) to read as follows:

§ 25.7520–1 Valuation of annuities, unitrust interests, interests for life or terms of years, and remainder or reversionary interests.

(a) *General actuarial valuations.* (1) Except as otherwise provided in this section and in § 25.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances), in the case of certain gifts after April 30, 1989, the fair market value of annuities, interests for life or for a term of years (including unitrust interests), remainders, and reversions is their present value determined under this section. See § 20.2031–7(d) of this chapter (and, for periods prior to May 1, 2009, § 20.2031–7A) for the computation of the value of annuities, unitrust interests, life estates, terms for years, remainders, and reversions, other than interests described in paragraphs (a)(2) and (a)(3) of this section.

(2) In the case of a gift to a beneficiary of a pooled income fund, see § 1.642(c)–6(e) of this chapter (or, for periods prior to May 1, 2009, § 1.642(c)–6A) with respect to the valuation of the remainder interest.

* * * * *

(b) * * *

(2) *Mortality component.* The mortality component reflects the mortality data most recently available from the United States census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised and the revised mortality component tables will be published in the regulations at that time. For gifts with valuation dates on or after May 1, 2009, the mortality component table (Table 2000CM) is contained in § 20.2031–7(d)(7). See § 20.2031–7A of this chapter for mortality component tables applicable to gifts for which the valuation date falls before May 1, 2009.

(c) * * *

(1) *Regulation sections containing tables with interest rates between 0.2 and 14 percent for valuation dates on or after May 1, 2009.* Section 1.642(c)–6(e)(6) of this chapter contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in § 1.642(c)–5. See § 1.642(c)–6A for single life remainder factors applicable to valuation dates before May 1, 2009. Section 1.664–4(e)(6) contains Table F (payout factors) and Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years). Section 1.664–4(e)(7) contains Table U(1) (unitrust single life remainder factors). These tables are used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in § 1.664–3. See § 1.664–4A for unitrust single life remainder factors applicable to valuation dates before May 1, 2009. Section 20.2031–7(d)(6) of this chapter contains Table B (actuarial factors used in determining the present value of an interest for a term of years), Table K (annuity end-of-interval adjustment factors), and Table J (term certain annuity beginning-of-interval adjustment factors). Section 20.2031–7(d)(7) contains Table S (single life remainder factors), and Table 2000CM (mortality components). These tables are used in determining the present value of annuities, life estates, remainders, and reversions. See § 20.2031–7A for single life remainder factors and mortality components applicable to valuation dates before May 1, 2009.

(2) *Internal Revenue Service publications containing tables with interest rates between 0.2 and 22 percent for valuation dates on or after May 1, 2009.* The following documents are available, at no charge, electronically via the IRS Internet site at *http://www.irs.gov:*

(i) Internal Revenue Service Publication 1457, ''Actuarial Valuations Version 3A'' (2009). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors may also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 and a pooled income fund as defined in § 1.642(c)–5 of this chapter.

(ii) Internal Revenue Service Publication 1458, ''Actuarial Valuations Version 3B'' (2009). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3 of this chapter.

(iii) Internal Revenue Service Publication 1459, ''Actuarial Valuations Version 3C'' (2009). This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12 of this chapter.

(d) *Effective/applicability date.* This section applies on and after May 1, 2009.

§ 25.7520–1T [Removed]

■ **Par. 28.** Section 25.7520–1T is removed.

■ **Par. 29.** Section 25.7520–3 is amended by revising paragraph (b)(2)(v), *Example 5,* paragraph (b)(4), and paragraph (c) to read as follows:

§ 25.7520–3 Limitation on the application of section 7520.

* * * * *

(b) * * *

(2) * * *

(v) * * *

Example 5. Eroding corpus in an annuity trust. (i) The donor, who is age 60 and in normal health, transfers property worth $1,000,000 to a trust on or after May 1, 2009, but before 2019. The trust will pay a 10 percent ($100,000 per year) annuity to a charitable organization for the life of the donor, payable annually at the end of each period, and the remainder then will be distributed to the donor's child. The section 7520 rate for the month of the transfer is 6.8 percent. First, it is necessary to determine whether the annuity may exhaust the corpus before all annuity payments are made. Because it is assumed that any measuring life may survive until age 110, any life annuity could require payments until the measuring

life reaches age 110. Based on a section 7520 interest rate of 6.8 percent, the determination of whether the annuity may exhaust the corpus before the termination of the annuity interest is made as follows:

Age to which life annuity may continue	110
less: Age of measuring life at date of transfer	60
Number of years annuity may continue	50
Annual annuity payment	$100,000.00
times: Annuity factor for 50 years. derived from Table B.	
(1–.037277/.068)	14.1577
Present value of term certain annuity	$1,415,770.00

(ii) Because the present value of an annuity for a term of 50 years exceeds the corpus, the annuity may exhaust the trust before all payments are made. Consequently, the annuity must be valued as an annuity payable for a term of years or until the prior death of the annuitant, with the term of years determined by when the fund will be exhausted by the annuity payments.

(iii) The annuity factor for a term of years at 6.8 percent is derived by subtracting the applicable remainder factor in Table B (see § 20.2031–7(d)(6)) from 1.000000 and then dividing the result by .068. An annuity of $100,000 payable at the end of each year for a period that has an annuity factor of 10.0 would have a present value exactly equal to the principal available to pay the annuity over the term. The annuity factor for 17 years is 9.8999 and the annuity factor for 18 years is 10.2059. Thus, it is determined that the $1,000,000 initial transfer will be sufficient to make 17 annual payments of $100,000, but not to make the entire 18th payment. The present value of an annuity of $100,000 payable at the end of each year for 17 years is $100,000 times 9.8999 or $989,990. The remaining amount is $10,010.00. Of the initial corpus amount, $10,010.00 is not needed to make payments for 17 years, so this amount, as accumulated for 18 years, will be available for the final payment. The 18-year accumulation factor is $(1 + 0.068)^{18}$ or 3.268004, so the amount available in 18 years is $10,010.00 times 3.268004 or $32,712.72. Therefore, for purposes of analysis, the annuity payments are considered to be composed of two distinct annuity components. The two annuity components taken together must equal the total annual amount of $100,000. The first annuity component is the exact amount that the trust will have available for the final payment, $32,712.72. The second annuity component then must be $100,000 minus $32,712.72, or $67,287.28. Specifically, the initial corpus will be able to make payments of $67,287.28 per year for 17 years plus payments of $32,712.72 per year for 18 years. The total annuity is valued by adding the value of the two separate annuity components.

(iv) Based on Table H of Publication 1457, Actuarial Valuations Version 3A, which may be obtained from the IRS Internet site, the present value of an annuity of $67,287.28 per year payable for 17 years or until the prior death of a person aged 60 is $597,013.12 ($67,287.28 × 8.8726). The present value of an annuity of $32,712.72 per year payable for 18 years or until the prior death of a person aged 60 is $296,887.56 ($32,712.72 × 9.0756). Thus, the present value of the charitable annuity interest is $893,900.68 ($597,013.12 + $296,887.56).

* * * * *

(4) *Example.* The provisions of paragraph (b)(3) of this section are illustrated by the following example:

Example. Terminal illness. The donor transfers property worth $1,000,000 to a child on or after May 1, 2009 but before 2019, in exchange for the child's promise to pay the donor $80,000 per year for the donor's life, payable annually at the end of each period. The donor is age 75 but has been diagnosed with an incurable illness and has at least a 50 percent probability of dying within 1 year. The section 7520 interest rate for the month of the transfer is 7.6 percent, and the standard annuity factor at that interest rate for a person age 75 in normal health is 6.6493 (1—.49465/.076). Thus, if the donor were not terminally ill, the present value of the annuity would be $531,944.00 ($80,000 × 6.6493). Assuming the presumption provided in paragraph (b)(3) of this section does not apply, because there is at least a 50 percent probability that the donor will die within 1 year, the standard section 7520 annuity factor may not be used to determine the present value of the donor's annuity interest. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the donor's actual life expectancy.

* * * * *

(c) *Effective/applicability dates.* Section 25.7520–3(a) is effective as of May 1, 1989. The provisions of paragraph (b) of this section, except *Example 5* in paragraph (b)(2)(v) and paragraph (b)(4), are effective with respect to gifts made after December 13, 1995. *Example 5* in paragraph (b)(2)(v) and paragraph (b)(4) are effective with respect to gifts made on or after May 1, 2009.

§ 25.7520–3T [Removed]

■ **Par. 30.** Section 25.7520–3T is removed.

Approved: July 22, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–19675 Filed 8–9–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Wednesday,

No. 154 August 10, 2011

Part IV

The President

Proclamation 8698—National Health Center Week, 2011

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Wednesday, August 10, 2011

Presidential Documents

Title 3—

The President

Proclamation 8698 of August 5, 2011

National Health Center Week, 2011

By the President of the United States of America

A Proclamation

Across our Nation, over 19 million Americans look to community health centers for medical checkups, education, advice, and critical services that keep them healthy. Throughout National Health Center Week, we recommit to supporting this vital resource for underserved communities, and we recognize the critical role community health centers play in our health-care system.

Every day, men, women, and children find help at community health centers. These centers lead the way in providing high-quality services at an affordable cost, while lifting up the quality of life for their patients. We see the results among Medicaid beneficiaries—those receiving care from a health center are less likely to be unnecessarily hospitalized or visit an emergency room. We also see the effects in rural areas with community health centers, where hospitals see fewer uninsured emergency room visits. These health centers are easy to access—Americans can find a health center near them by using the ''Find a Health Center'' tool at www.HRSA.gov.

My Administration continues to support these centers. Between the American Recovery and Reinvestment Act and the Affordable Care Act, new funding has been committed to support technology and infrastructure updates to existing centers, as well as the construction of new ones. These laws also provided for important new initiatives that will benefit all Americans. The Affordable Care Act provided for the Health Centers Advanced Primary Care Practice demonstration project, which will use community health centers to test the impact of team-based treatment approaches on the care of elderly patients.

Across our vast and diverse land, Americans have always made it their duty to serve their neighbors in need. It is the common interest and purpose of building a stronger, healthier Nation that drives the work of community health centers and fuels our efforts to improve our health-care system. During National Health Center Week, we celebrate the contributions of community health centers, and we rededicate ourselves to advancing the well-being of all our people.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week of August 7 through August 13, 2011, as National Health Center Week. I encourage all Americans to celebrate this week by visiting their local community health center, meeting local health center providers, and exploring the programs they offer to help keep their families healthy.

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

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