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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS–2011–0075]

Tuberculosis in Cattle and Bison; State and Zone Designations; Michigan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations to adjust the boundaries of the modified accredited, modified accredited advanced, and accredited-free tuberculosis risk classification zones for the State of Michigan. We have determined that 55 counties that are currently designated modified accredited advanced status now meet our requirements for accredited-free status. In addition, Iosco and Ogemaw Counties, of which some portions are designated modified accredited and other portions designated modified accredited advanced, now meet the requirements for accredited-free status. We also have determined that Presque Isle County, which is currently designated modified accredited, now meets our requirements for modified accredited advanced status. These actions lessen restrictions on the interstate movement of cattle and bison from these areas of Michigan.

DATES: This interim rule is effective September 14, 2011. We will consider all comments that we receive on or before November 14, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0075-0001.*
- *Postal Mail/Commercial Delivery:* Send your comments to Docket No. APHIS–2011–0075, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0075* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. C. William Hench, Senior Staff Veterinarian, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 2150 Centre Avenue, Building B–3E20, Fort Collins, CO 80526–8117; (970) 494–7378.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis.* Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis,* the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock.

In carrying out the national eradication program, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations. The regulations require the testing of cattle and bison for tuberculosis, define the Federal tuberculosis status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle and bison leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 (referred to below as the regulations) and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999 (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis.

Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

Request for Boundary Adjustment of Modified Accredited, Modified Accredited Advanced, and Accredited-Free Zones in Michigan

The status of a State or zone is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards for cattle and bison contained in the UMR. In addition, the regulations allow that a State may request split-State status via partitioning into specific geographic regions or zones with differential status designations if bovine tuberculosis is detected in a portion of a State and the State demonstrates that it meets certain criteria with regard to zone classification.

The State of Michigan is currently divided into three zones with different classifications. The first zone, which is classified as accredited-free, comprises an area in Michigan known as the Upper Peninsula that comprises Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft Counties.

The second zone, which is classified as modified accredited, comprises Alcona, Alpena, Montmorency, Oscoda, and Presque Isle Counties and those portions of Iosco and Ogemaw Counties that are north of the southernmost boundary of the Huron National Forest and the Au Sable State Forest. The third zone comprises the remainder of the State and is classified as modified accredited advanced.

We have received a request from the State of Michigan for changes to the boundaries of these zones. Specifically, State animal health officials asked that the status of 55 counties and the portions of Iosco and Ogemaw counties south of the southernmost boundary of the Huron National Forest and the Au Sable State Forest be raised from modified accredited advanced status to accredited-free status and the status of the remaining areas in Iosco and Ogemaw Counties be raised from modified accredited to accredited-free. The State of Michigan also requested that the status of Presque Isle County be raised from modified accredited to modified accredited advanced. In their request, Michigan officials demonstrated to APHIS that the counties described above meet the criteria for the new statuses set forth in the definitions of *modified accredited advanced State or zone* and *accredited-free State or zone* in § 77.5 of the regulations. Additionally, the State complies with the conditions of the UMR.

Immediate Action

Immediate action is warranted to relieve restrictions on the interstate movement of cattle and bison from the newly classified modified accredited advanced and accredited free zones in Michigan. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Michigan currently has a split State status for bovine tuberculosis with an accredited-free zone, a modified accredited advanced zone, and a modified accredited zone. This interim rule will reclassify the status of 55 counties from modified accredited advanced status to accredited-free status. In addition, Presque Isle County will be reclassified from modified accredited to modified accredited advanced. Iosco and Ogemaw Counties, of which some portions are designated modified accredited and other portions designated modified accredited advanced, will be reclassified as accredited-free.

Modified accredited status imposes various requirements for tuberculosis testing of cattle. Reclassification to accredited-free removes all movement restrictions, and reclassification from modified accredited to modified accredited advanced reduces requirements.

Advancement of status for the above-mentioned counties will allow producers to move their cattle with fewer pre-movement testing requirements, saving time and money. Because few producers will be affected, these savings are expected to be relatively small. This action will not significantly change program operations and will have no significant effects on other Federal agencies, State governments, or local governments. Michigan animal health authorities have a plan and the capability to maintain separate tuberculosis zones within their State with separate requirements and border controls.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 77.7, paragraph (b)(1) is revised to read as follows:

§ 77.7 Accredited-free States or zones.

* * * * *

(b) * * *

(1) All of the State of Michigan except for the zones that comprise those counties in Michigan described in § 77.9(b)(1) and § 77.11(b)(1).

* * * * *

■ 3. In § 77.9, paragraph (b)(1) is revised to read as follows:

§ 77.9 Modified accredited advanced States or zones.

* * * * *

(b) * * *

(1) A zone in Michigan that comprises Antrim, Charlevoix, Cheboygan, Crawford, Emmet, Otsego, and Presque Isle Counties.

* * * * *

■ 4. In § 77.11, paragraph (b)(1) is revised to read as follows:

§ 77.11 Modified accredited States or zones.

* * * * *

(b) * * *

(1) A zone in Michigan that comprises Alcona, Alpena, Montmorency, and Oscoda Counties.

* * * * *

Done in Washington, DC, this 7th day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–23432 Filed 9–13–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0604; Directorate Identifier 2011–NE–21–AD; Amendment 39–16791; AD 2011–18–09]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines Model IO–720–A1B Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain model IO–720–A1B Lycoming Engines reciprocating engines. This AD requires a crankshaft inspection for certain parts that may be installed. This AD was prompted by the failure of a crankshaft due to incorrect parts installed. We are issuing this AD to prevent engine crankshaft failure and damage to the airplane.

DATES: This AD is effective September 29, 2011.

We must receive comments on this AD by October 31, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (*phone:* 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; *phone:* 516–228–7337; *fax:* 516–794–5531; *e-mail: Norman.perenson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report of a crankshaft failing after a repair station installed a crankshaft that had improper counterweight washers installed. The repair station has determined that two additional engines require inspection, to determine if the crankshaft they installed has the same improper washers. However, the two engines which have not been inspected, cannot be located. This condition, if not corrected, could result in engine crankshaft failure and damage to the airplane.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist in other products of the same type design.

AD Requirements

This AD requires removing four cylinders from each affected engine and inspecting the engine crankshaft counterweight washers.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a crankshaft with improper damper washers installed, failed after 440 hours of operation. The location of the two additional engines that require inspection, and the unknown current time-since-overhaul on those engines, warrants immediate notice to advise the current or subsequent owner of the need to inspect the engines before further flight. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0604 and Directorate Identifier 2011–NE–21–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect two Lycoming Engines model IO–720–A1B reciprocating engines, installed on airplanes of U.S. registry. We also estimate that the inspection will take about 0.5 work-hour per engine to perform, and that the average labor rate is $85 per work-hour. Required parts would cost $0 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $170.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(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),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–18–09 Lycoming Engines (formerly Textron Lycoming Division, AVCO Corporation): Amendment 39–16791; Docket No. FAA–2011–0604; Directorate Identifier 2011–NE–21–AD.

Effective Date

(a) This AD is effective September 29, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Lycoming Engines reciprocating engines, model IO–720–A1B, serial number L–1457–54A and serial number L–1458–54A. These engines were last known to be installed in a Beech U–8F (Queen Air) N51779 and operating in the southern U.S. and Mexico.

Unsafe Condition

(d) This AD was prompted by the failure of a crankshaft due to incorrect parts installed. We are issuing this AD to prevent engine crankshaft failure and damage to the airplane.

Compliance

(e) Comply with this AD before further flight after the effective date of this AD, unless already done.

Crankshaft Inspection

(f) Remove the four cylinders from one side of the engine. Guidance on removing the cylinders can be found in the Lycoming Engines Overhaul Manual.

(g) Each counterweight has two rollers that should be held in place by washers, Lycoming part number (P/N) 71907. The washers can be identified as having three holes each, with a diameter of 0.185 inch. These washers are located at the front and rear of each counterweight for a total of four P/N 71907 washers per counterweight. The eight counterweights are located at the top and bottom of each crankshaft cheek, totaling 32 washers per crankshaft.

(h) Rotate the crankshaft to inspect the holes in washers at the front and rear of each counterweight as well as the top and bottom of each cheek.

(i) If each hole, in each of the 32 washers, measures 0.185 inch, then no further action is required. Reinstall the cylinders and test the engine. Guidance on reinstalling and testing can be found in the Lycoming Engines Overhaul Manual.

(j) If any of the 32 washers have one or more holes that do not measure 0.185 inch, then remove the crankshaft assembly and replace it with a serviceable crankshaft assembly. Scrap the non-conforming crankshaft.

Special Flight Permits

(k) Special flight permits are authorized only if the engine has less than 400 hours time since overhaul.

Alternative Methods of Compliance (AMOCs)

(l) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(m) For more information about this AD, contact Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; *phone:* 516–228–7337; *fax:* 516–794–5531; *e-mail: Norman.perenson@faa.gov.*

Material Incorporated by Reference

(n) None.

Issued in Burlington, Massachusetts, on August 18, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–22244 Filed 9–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0825]

RIN 1625–AA00

Safety Zone; Head of the Cuyahoga, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Cuyahoga River, Cleveland, OH. This safety zone is intended to restrict vessels from a portion of the Cuyahoga River during the Head of the Cuyahoga. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a rowing regatta.

DATES: This rule is effective on September 17, 2011 from 7 a.m. to 4 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0825 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0825 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST3 Rory Boyle, Marine Events Coordinator, U.S. Coast Guard Sector Buffalo, at Coast Guard; telephone 716–843–9343, e-mail *Rory.c.Boyle@USCG.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are

''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM is impractical and contrary to the public interest. The final details of this event were not received in sufficient time for the Coast Guard to solicit public comments before the start of the regatta. Thus, waiting for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime fireworks displays.

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

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with rowing regattas. Based on recent accidents that have occurred in other Captain of the Port zones, the Captain of the Port Buffalo, has determined a rowing regatta presents significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, and alcohol use, present a significant risk of serious injuries or fatalities.

Discussion of Rule

This temporary safety zone is necessary to ensure the safety of spectators and vessels during the Head of the Cuyahoga. The safety zone will be enforced from 7 a.m. until 4 p.m. September 18, 2011. The safety zone will encompass all waters of the Cuyahoga River between a line drawn perpendicular to each riverbank at 41.29′19″ N, 81.40′50″ W (Marathon Bend) to a line drawn perpendicular to each river bank at 41.29′56″ N, 81.42′27″ W (confluence with the Old River).

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that during the short time this zone will be in effect, it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel or legal policy issue. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The safety zone will be enforced for a relatively short time, and vessels may still pass through the zone with permission of the Captain of the Port.

Small Entities

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

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

This temporary final rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Cuyahoga River in Cleveland Harbor, Cleveland, OH between 7 a.m. to 4 p.m. on September 18, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for twelve hours and thirty minutes for one day and the Safety Zone will allow vessels to move freely around the safety zone on the Cuyahoga River.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

■ 2. Add § 165.T09–0825 to read as follows:

§ 165.T09–0825 Safety Zone; Head of the Cuyahoga, Cuyahoga River, Cleveland, OH

(a) Location. The safety zone will encompass all waters of the Cuyahoga River between a line drawn perpendicular to each riverbank at 41.29′19″ N, 81.40′50″ W (Marathon Bend) to a line drawn perpendicular to each river bank at 41.29′56″ N, 81.42′27″ W (confluence with the Old River).

(b) Effective Period and Enforcement Period. This safety zone will be effective and enforced from 7 a.m. until 4 p.m. on September 18, 2011.

(c) Regulations. (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within the safety zone established by this section is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 25, 2011.

S.M. Wischmann,

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

[FR Doc. 2011–23462 Filed 9–13–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0091]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the regulations found in 33 CFR 165.931 for Navy Pier Fireworks in Chicago, Illinois. This event occurs in the Captain of the Port, Sector Lake Michigan's zone from September 10, 2011 through October 29, 2011. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks events. During the aforementioned period, restrictions will be enforced upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced at various times and on various dates between 9:15 on September 10, 2011 to 9:15 p.m. October 29, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7154, e-mail *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931 for the following events:

(1) *Navy Pier Fireworks;* on September 10, 2011 from 9:15 p.m. through 10:30 p.m.; on September 21 from 8:45 p.m. through 9:20 p.m.; October 1, 2011 from 8:45 p.m. through 9:15 p.m.; on October 8, 2011 from 8:45 p.m. through 9:15 p.m.; on October 15, 2011 from 8:45 p.m. through 9:15 p.m.; on October 22, 2011 from 8:45 p.m. through 9:15 p.m.; and on October 29, 2011 from 8:45 p.m. through 9:15 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: August 31, 2011.

M.W. Sibley,

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

[FR Doc. 2011–23463 Filed 9–13–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0393; FRL–9463–1]

Approval and Promulgation of Air Quality Implementation Plans; Ohio and West Virginia; Determinations of Attainment of the 1997 Annual Fine Particle Standard for Four Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action determining that the fine particulate matter ($PM_{2.5}$) nonattainment areas of Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton (hereafter referred to as ''Areas'') have attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) under the Clean Air Act (CAA). EPA is also determining, based on quality-assured, quality-controlled, and certified ambient air monitoring data for the 2007–2009 monitoring period, that these Areas have attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

DATES: This final rule is effective on October 14, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2010–0393. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy 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 Carolyn Persoon, Environmental Engineer, at (312) 353–8290, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: In Region 5, Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.* In Region 3, Irene Shandruk, Office of Air Program Planning (3AP30), U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–2166, *shandruk.irene@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. What action is EPA taking?
II. What are the effects of this action?
III. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is making the final determination that three Ohio nonattainment areas (the Cleveland-Akron, the Columbus, and the Dayton-Springfield areas) and one Ohio-West Virginia bi-state area (the Steubenville-Weirton area) have attained the 1997 annual $PM_{2.5}$ NAAQS. EPA's determination is based upon the most recent three years of complete, quality-assured, quality-controlled, and certified ambient air monitoring data for the Areas showing that they have monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS based on the 2007–2009 data as well as the 2008–2010 data (see Table 1). EPA is also making the final determination, in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664), that the Areas have attained the 1997 annual $PM_{2.5}$ NAAQS by their applicable attainment date of April 5, 2010.

EPA published in the **Federal Register** its proposed determination for the four nonattainment Areas on May 17, 2011 (76 FR 28393). A detailed discussion of the rationale for the determination, and the effect of the determination, was included in the proposal. EPA received no comments on the proposed rule.

TABLE 1—ANNUAL $PM_{2.5}$ DESIGN VALUES FOR OHIO (CLEVELAND-AKRON, COLUMBUS, DAYTON-SPRINGFIELD, AND STEUBENVILLE-WEIRTON) AREA MONITORS WITH COMPLETE DATA FOR 2007 TO 2009 IN $\mu g/m^3$

State	County	Monitor	Annual design value 2007–2009 ($\mu g/m^3$)	Annual design value 2008–2010 ($\mu g/m^3$)
		Cleveland-Akron		
OH	Cuyahoga	39–035–0034	11.6	10.7
		39–035–0038	14.4	13.6
		39–035–0045	13.6	12.9
		39–035–0060	14.1	13.4
		39–035–0065	14.3	13.4
		39–035–1002	12.1	11.4
	Lorain	39–093–3002	11.4	10.6
	Medina	39–103–0003	11.8	11.1
	Portage	39–133–0002	12.3	11.5
	Summit	39–153–0017	13.7	13.2
		39–153–0023	12.7	12.3
		Columbus		
OH	Franklin	39–049–0024	13.0	12.5
		39–049–0025	12.9	12.1
		39–049–0081	11.7	11.2
		Dayton-Springfield		
OH	Clark	39–023–0005	13.2	
	Greene	39–057–0005	12.1	12.1
	Montgomery	39–113–0032	13.7	13.2
		Steubenville-Weirton		
OH	Jefferson	39–081–0017	14.2	13.0
		39–081–1001	13.6	12.7
WV	Brooke	54–009–0005	14.4	13.7
		54–009–0011	14.0	13.1
	Hancock	59–029–1004	13.4	12.4

II. What are the effects of this action?

EPA's determination of attainment, based on the most recent three years of quality-assured, quality-controlled, and certified ambient air monitoring data suspends the requirements for the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas from submitting attainment demonstrations, RACM (including RACT), RFP plans, contingency measures, and other planning SIP revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS for so long as the Areas continue to attain the 1997 annual $PM_{2.5}$ NAAQS.

Specifically, the determination of attainment for the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas (1) Suspend the states' obligation for Ohio and West Virginia to submit the requirements listed above; (2) continue such suspension until such time, if any, that EPA subsequently determines that any monitor in the area has violated the 1997 annual $PM_{2.5}$ NAAQS; and (3) be separate from any future designation determination or requirements for the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas based on the 2006 $PM_{2.5}$ NAAQS or future $PM_{2.5}$ NAAQ revision.

Finalizing this action does not constitute a redesignation of the Areas to attainment for the 1997 annual $PM_{2.5}$ NAAQS under CAA section 107(d)(3). Further, finalizing this action does not involve approving maintenance plans for the Areas, nor does it involve a determination that the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas have met all the requirements for redesignation under the CAA. Therefore, the designation status of the portions of the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas will remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA takes final rulemaking action to determine that such portions meet the CAA requirements for redesignation to attainment.

In addition, EPA is finalizing a separate and independent determination that these Areas have attained the 1997 annual $PM_{2.5}$ standard by the applicable attainment date (April 5, 2010), thereby satisfying EPA's requirement pursuant to section 179(c)(1) of the CAA to make a determination of whether the Areas attained the standard by the applicable attainment date.

This action described above makes determinations regarding the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton areas' attainment only with respect to the 1997 annual $PM_{2.5}$ NAAQS. Today's action does not address the 24-hour $PM_{2.5}$ NAAQS.

III. Statutory and Executive Order Reviews

This action makes determinations of attainment based on air quality, and will result in the suspension of certain Federal requirements, and will not impose additional requirements beyond

those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 November 14, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 29, 2011.

Susan Hedman,

Regional Administrator, Region 5.

Dated: August 10, 2011.

W.C. Early,

Acting Regional Administrator, Region 3.

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 KK—Ohio

■ 2. Section 52.1880 is amended by adding paragraph (n) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(n) Determination of Attainment. EPA has determined, as of September 14, 2011, that based on 2007 to 2009 ambient air quality data, the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton nonattainment areas have attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for these areas to submit attainment demonstrations, associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the standard for as long as these areas continue to meet the 1997 annual $PM_{2.5}$ NAAQS.

■ 3. Section 52.1892 is amended by redesignating the existing paragraph as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.1892 Determination of attainment.

* * * * *

(b) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton fine particle ($PM_{2.5}$) nonattainment areas attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas are not subject to the consequences of failing to attain pursuant to section 179(d).

Subpart XX—West Virginia

■ 4. Section 52.2526 is amended by adding paragraph (d) to read as follows:

§ 52.2526 Control strategy: Particulate matter.

* * * * *

(d) Determination of Attainment. EPA has determined, as of September 14, 2011, that based on 2007 to 2009 ambient air quality data, the Steubenville-Weirton nonattainment area has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

■ 5. Section 52.2527 is amended by redesignating the existing paragraph as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.2527 Determination of attainment.

* * * * *

(b) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Steubenville-Weirton fine particle ($PM_{2.5}$) nonattainment area attained the 1997 annual $PM_{2.5}$ National Ambient

Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Steubenville-Weirton $PM_{2.5}$ nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

[FR Doc. 2011–23367 Filed 9–13–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0684; FRL–8887–2]

Sulfur Dioxide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of sulfur dioxide in or on fig. This action is associated with the utilization of a crisis exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on figs. This regulation establishes a maximum permissible level for residues of sulfur dioxide, including its metabolites and degradates (determined by measuring only sulfur dioxide (SO_2)), in or on fig at 10 parts per million (ppm). This time-limited tolerance expires on December 31, 2014.

DATES: This regulation is effective September 14, 2011. Objections and requests for hearings must be received on or before November 14, 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–2011–0684. All documents in the docket are listed in the docket index available in *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; e-mail address: *pemberton.libby@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0684 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 14, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0684, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for residues of sulfur dioxide, including its metabolites and degradates (determined by measuring only sulfur dioxide (SO_2)), at 10 ppm. This time-limited tolerance is effective until December 31, 2014.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under

an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Sulfur Dioxide on Figs and FFDCA Tolerances

Excessive rain and humidity at flowering and early fruit development in the spring are critical factors in development of gray mold caused by *Botrytis cinerea* (*B. cinerea*) and these have been high in the areas where California figs are grown over the past two years. California estimated that gray mold could be responsible for a 24% yield loss; and there are no pre or post-harvest fungicides registered to control B. cinerea on fresh figs.

The Applicant asserts that an emergency condition exists in accordance with the criteria for approval of an emergency exemption, and has utilized a crisis exemption under FIFRA section 18 to allow the use of sulfur dioxide on figs for control of gray mold caused by *B. cinerea* in California. After having reviewed the submission, EPA concurs that an emergency condition exists.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of sulfur dioxide in or on fig. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although these time-limited tolerances expire on December 31, 2014, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on figs after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this time-limited tolerance at the time of that application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any decisions about whether sulfur dioxide meets FIFRA's registration requirements for use on fig or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of sulfur dioxide by a State for special local needs under FIFRA section 24(c). Nor does this tolerance by itself serve as the authority for persons in any State other than California to use this pesticide on the applicable crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for sulfur dioxide, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including sulfite sensitive individuals, infants and children. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerances for residues of sulfur dioxide, including its metabolites and degradates (determined by measuring only sulfur dioxide (SO_2)), at 10 ppm. EPA's assessment of exposures and risks associated with establishing time-limited tolerances follows.

A. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, and infants and children, *as* well as sulfite sensitive individuals.

Evaluations performed by the World Health Organization (WHO), the

International Agency for Research on Cancer (IARC), and the Agency for Toxic Substances and Disease Registry (ATSDR) were relied upon for the safety finding for sulfur dioxide made in the May 2007 RED assessment on inorganic sulfites, which includes the chemicals sulfur dioxide and sodium metabisulfite (end-use inorganic sulfite products contain sulfur dioxide at 99.9 to 100%, and sodium metabisulfite at 37.5 to 98.5%. These assessments are based on peer-reviewed evaluations performed by the Cosmetic Ingredient Review (a program established in 1976 by the Cosmetic, Toiletry & Fragrance Association, now known as the Personal Care Products Council (PCPC), with the support of the U.S. Food and Drug Administration (FDA) and the Consumer Federation of America (CFA); the Organization for Economic Cooperation and Development-Screening Information Data Set and from other open literature sources. People may be exposed to small amounts of sulfur through the food supply. However, since sulfur does not cause any relevant toxic effects, no quantitative dietary risk assessment is needed. Short-term studies show that sulfur is of very low acute oral toxicity and does not irritate the skin (it has been placed in Toxicity Category IV, the least toxic category, for these effects). Sulfur dioxide (21 CFR 182.3862) is listed as Generally Recognized as Safe (GRAS) by the FDA as a preservative in certain foods. The Select Committee on GRAS Substances (a committee of qualified scientists contracted by FDA to review and evaluate the safety of GRAS substances) concluded that: ''There is no evidence in the available information on sulfur dioxide that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when used at levels that are now current and in the manner now practiced.'' This conclusion was based on the knowledge that orally administered sulfite is very rapidly oxidized to sulfate in all species studied. The metabolic removal of sulfite appears to be the critical defense mechanism. The WHO has emphasized the use of appropriate labeling for alerting individuals who cannot tolerate sulfites. After receiving and reviewing reports of adverse reactions in certain individuals following ingestion of sulfiting agents used as preservatives in food products, beverages, and fresh fruits and vegetables, the FDA requires ingredient labels to list sulfite concentrations in excess of 10 ppm. Several regulatory endpoints and standards for ambient air concentrations of sulfur dioxide have been established at the state, Federal and international levels. The endpoint selected by the Agency for the bystander inhalation risk assessment is 0.25 ppm sulfur dioxide, with one-hour exposure duration. The 0.25 ppm concentration is based on an ambient air quality standard set by the California Air Resources Board. This endpoint is deemed most applicable to this exposure scenario, as it is based on effects of concern for bystanders (such as bronchoconstriction, shortness of breath, wheezing, and chest tightness during physical activity in persons with asthma).

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sulfur dioxide, EPA considered exposure under the time-limited tolerances established by this action, as well as all existing sulfur dioxide tolerances in 40 CFR 180.444. Exposures to sulfites when used as an active or inert pesticide ingredient are minimal because it is known to be readily biodegradable, quickly oxidized, and rapidly excreted from the body. In addition, sulfur dioxide (21 CFR 182.3862) is listed as GRAS by the FDA, with limitations, as a food preservative. As such, sulfites are found in many foods, primarily as a result of the GRAS preservative use. It is estimated that sulfite concentrations of >100 ppm may be found in dried fruits (excluding dark raisins and prunes), lemon and lime juices, wine, molasses, and sauerkraut juice. Dried potatoes, grape juice, wine vinegar, gravies, fruit topping, and maraschino cherries may contain between 50 and 100 ppm sulfur dioxide. Foods containing between 10 ppm and 50 ppm include pectin, fresh shrimp, corn syrup, sauerkraut, pickled foods, corn starch, hominy, frozen potatoes, maple syrup, imported jams and jellies, and fresh mushrooms (CIR 2003). Preliminary data developed by the Interregional Research Project No. 4 (IR–4) from the concluded experimental phase of a study now being conducted on figs was submitted with this exemption request. The design of the IR–4 study is sufficient in its scope having followed the protocol put forward for determining the magnitude of the residue on fresh figs from the use of sulfur dioxide. This study shows that following application made at a 10x exaggerated rate of 250 ppm sulfur dioxide/hour, samples analyzed from 1 hour up to 28 days after treatment were all found to have residue levels of sulfur dioxide below the limit of detection (LOD) of 10 ppm. In view of the data provided by IR–4, a linear extrapolation from the 10x exaggerated rate to a 1x application rate determined that a 1x rate is likely to result in residue levels of sulfur dioxide of 2.5 ppm or lower when following the use-pattern in this crisis exemption.

2. *Drinking water exposure.* Based on environmental fate information for sulfur dioxide and the requested post-harvest use pattern (in closed chambers), concentrations of concern are not expected in drinking water.

3. *Inhalation exposure.* Based on the Probabilistic Exposure and Risk Model for Fumigants, version 2.1.1 (PERFUM2) the requested use is expected to limit bystander exposure potential to sulfur dioxide concentrations at or below 0.25 ppm. This bystander exposure scenario is considered ''worst-case,'' in that it assumes the ventilation stack is at the edge of the treatment warehouse, and the warehouse is in close proximity to the fumigation facility property line.

4. *Other non-occupational exposure.* In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Currently there are no residential uses for sulfur dioxide, as the use of inorganic sulfites is limited to postharvest fumigation of grapes. Environmental sources of sulfur dioxide exposure include the combustion of fossil fuels, smelting of sulfide ores, volcanic emissions, and other natural sources. Sulfur dioxide is also used to manufacture hydrosulfites, to bleach wood pulp and paper, to process, disinfect, and bleach food, for waste and water treatment, and in metal, ore, and oil refining (ATSDR 2004). Sufficient information is available from public sources to adequately characterize sulfur dioxide.

C. Safety Factor for Infants and Children

There is sufficient toxicological information for sulfur dioxide to address risks to infants and children. The available information indicates that there is no evidence of increased quantitative or qualitative susceptibility of the offspring after in utero or post-natal exposure. Based on the lack of significant toxicity in existing toxicological testing of sulfur dioxide and FDA's classification of sulfites as GRAS, EPA has not performed a quantative risk assessment for sulfur dioxide using safety factors. For the same reason, and given the absence of

any evidence of pre- or post-natal sensitivity to sulfur dioxide, EPA concludes that there is reliable data to support not using an additional safety factor to protect infants and children.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found inorganic sulfites to share a common mechanism of toxicity with any other substances, and sulfur dioxide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sulfur dioxide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for U.S. Population, Infants and Children

The residue levels expected from this use on figs are relatively low when compared to concentrations of sulfites in many common foods and viewed as GRAS by the FDA. Given the low fig use rate, low expected residue levels, and relatively low consumption of figs, the safety finding made in the May 2007 RED assessment for the post-harvest use on grapes may be extended to include the proposed tolerance level of 10 ppm on figs. EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to sulfite sensitive individuals, infants and children, from aggregate exposure to residues of sulfur dioxide, including its metabolites and degradates.

VII. Other Considerations

A. Analytical Enforcement Methodology

For the determination of residues in food, the FDA has published a titrimetric method of analysis capable of providing a 10 ppm LOD. It is delineated in 21 CFR part 101 Appendix A and is based on the Association of Official Agricultural Chemists official method for sulfites. For this procedure, sulfur dioxide is steam distilled from the crop sample and trapped in hydrogen peroxide to produce sulfuric acid. The sulfuric acid is then titrated against aqueous sodium hydroxide and expressed as sulfur dioxide. The sulfur dioxide concentrations are converted to sulfite residues with molecular weight conversions. Adequate recovery data are available to support the use of this procedure as a tolerance enforcement method.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for sulfur dioxide in/on figs.

VIII. Conclusion

Therefore, a time-limited tolerance is established for residues of sulfur dioxide, including its metabolites and degradates, (determined by measuring only sulfur dioxide (SO_2)), at 10 ppm. This tolerance is effective until December 31, 2014.

IX. Statutory and Executive Order Reviews

This final rule establishes tolerances under sections 408(e) and 408(l)(6) of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, titled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with sections 408(e) and 408(l)(6) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 2, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.444 is amended by:

■ i. Designating the existing text as paragraph (a) and adding a heading; and

■ ii. Adding paragraphs (b), (c) and (d).

The amendments read as follows:

§ 180.444 Sulfur dioxide; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for residues of sulfur dioxide, including its metabolites and degradates in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FFIFRA section 18 emergency exemptions. Compliance with the tolerance levels specified below is to be determined by measuring only sulfur dioxide (SO_2). The tolerances expire on the date specified in the table.

Commodity	Parts per million	Expiration/ revocation date
Fig	10	12/31/14

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2011–23359 Filed 9–13–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0104; FRL–8883–9]

Atrazine, Chloroneb, Chlorpyrifos, Clofencet, Endosulfan, et al.; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain tolerances in follow-up to canceled uses for chloroneb, chlorpyrifos, clofencet, endosulfan, ethyl parathion, methidathion, methyl parathion, and N,N-diethyl-2-(4-methylbenzyloxy)ethylamine, modifying certain tolerances for atrazine, setting a revocation date for specific endosulfan tolerances, and making minor revisions to tolerance expressions for a few of the aforementioned pesticide ingredients. Also, EPA is removing expired tolerances for methidathion, and ethyl and methyl parathion.

DATES: This regulation is effective September 14, 2011. Objections and requests for hearings must be received on or before November 14, 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–2011–0104. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011- 0104 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 14, 2011. Addresses for mail and hand delivery of objections

and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0104, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background

A. What action is the agency taking?

In the **Federal Register** of May 4, 2011 (76 FR 25281) (FRL–8870–4), EPA issued a proposal to revoke certain tolerances in follow-up to canceled uses for chloroneb, chlorpyrifos, clofencet, endosulfan, ethyl parathion, methidathion, methyl parathion, and N,N-diethyl-2-(4-methylbenzyloxy)ethylamine, modify certain tolerances for atrazine, set a revocation date for specific endosulfan tolerances, make minor revisions to tolerance expressions, in accordance with current Agency practice to describe more clearly the measurement and scope or coverage of the tolerances, including applicable metabolites and degradates, for chloroneb, clofencet, endosulfan, methidathion, and methyl parathion, remove expired tolerances for methidathion, methyl parathion, and ethyl parathion, and revise the tolerance nomenclature for a specific atrazine tolerance. Also, the proposal of May 4, 2011 (76 FR 25281) provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards.

In this final rule, EPA is revoking tolerances for residues of chloroneb, chlorpyrifos, clofencet, endosulfan, ethyl parathion, methidathion, methyl parathion, and N,N-diethyl-2-(4-methylbenzyloxy)ethylamine, modifying specific tolerances for atrazine, and setting a revocation date for specific endosulfan tolerances. Also, EPA is making minor revisions to tolerance expressions for chloroneb, clofencet, endosulfan, methidathion, and methyl parathion, removing expired tolerances for methidathion, methyl parathion, and ethyl parathion, and revising the tolerance nomenclature for a specific atrazine tolerance.

EPA is finalizing these tolerance actions in order to follow-up on canceled uses of chloroneb, chlorpyrifos, clofencet, N,N-diethyl-2-(4-methylbenzyloxy)ethylamine, endosulfan, ethyl parathion, methidathion, and methyl parathion, and modifying certain tolerances as recommended in the atrazine Reregistration Eligibility Decision (RED) of 2006. As part of the tolerance reassessment process, EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each Reregistration Eligibility Decision (RED) and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications, to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or (703) 605–6000; Internet at *http://www.ntis.gov.* An electronic copy is available on the Internet for the atrazine RED at *http://www.epa.gov/pesticides/reregistration/status.htm.*

In this final rule, EPA is revoking certain tolerances and/or tolerance exemptions because either they are no longer needed or are associated with food uses that are no longer registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in the United States. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide active ingredient. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or legally treated domestic commodities.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a FFDCA section 408(f) order requesting additional data or issuance of a FFDCA section 408(d) or (e) order revoking the tolerances on other grounds, commenter retracts the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under the Food Quality Protection Act (FQPA).

In response to the proposal published in the **Federal Register** of May 4, 2011 (76 FR 25281), EPA received comments during the 60-day public comment period, as follows:

General—i. *Comment by private citizen.* An anonymous comment was received which expressed concerns about pesticides on food and that only zero tolerance levels should be acceptable.

Agency response. The commenter did not take issue with any of the Agency's specific conclusions to modify, revoke, or set a revocation date for certain tolerances. Also, the commenter did not refer to any specific studies which pertain to those conclusions. The Agency has not changed its previous determination that the tolerances in question are safe.

1. Methidathion—Comment by Gowan Company. Gowan requested that the expiration/revocation date regarding each tolerance for residues of methidathion on citrus, oil; fruit, citrus, group 10, except tangerine; fruit, pome, group 11; fruit, stone, group 12; and tangerine be extended from December 31, 2016 until December 31, 2018 in order to allow treated commodities, such as frozen commodities that can be stored longer, to clear the channels of trade.

Agency response. In the **Federal Register** of May 4, 2011 (76 FR 25281), EPA proposed to revoke specific tolerances for residues of methidathion in 40 CFR 180.298(a) and included the tolerances on citrus, oil; fruit, citrus, group 10, except tangerine; fruit, pome, group 11; fruit, stone, group 12; and tangerine, each proposed with an expiration/revocation date of December 31, 2016, among other tolerance actions proposed for methidathion. As stated in Unit II.C. of the May 4, 2011 document, commodities treated with pesticides that are in the channels of trade following tolerance revocation are subject to FFDCA section 408(l)(5). Under this section, any residues of pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA and the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food. Therefore, the revocation date for these tolerances remains December 31, 2016. In addition, EPA is finalizing all other amendments (including all other tolerance revocations) proposed concerning methidathion in the **Federal Register** of May 4, 2011 (76 FR 25281).

2. Atrazine—Comment by private citizen. The commenter expressed concerns about developmental and toxicological risks to frogs in the United States and the potential risks of atrazine exposure. The commenter requested that as part of the Agency's review of atrazine, it should reevaluate the impacts of atrazine on frogs.

Agency response. The commenter's concerns regarding potential ecological effects of atrazine are not germane to tolerance setting under FFDCA. Also, the commenter did not take issue with any of the Agency's specific conclusions to decrease the atrazine tolerances on corn, field, forage; sorghum, forage, forage; and sorghum, grain forage (and revise it to sorghum, grain, forage) based on the available field trial data. The commenter did not refer to any specific studies which pertain to those conclusions about decreasing the 3 specific tolerances aforementioned. EPA has determined that the proposed tolerance levels meet the safety standard of FFDCA section 408(b). Consequently, EPA is decreasing the tolerances in 40 CFR 180.220(a) on corn, field, forage to 1.5 ppm; sorghum, forage, forage to 0.25 ppm; and sorghum, grain forage to 0.25 ppm, and revising sorghum, grain forage to sorghum, grain, forage.

The Agency did not receive any specific comments, during the 60-day comment period, on the following pesticide active ingredients: Chloroneb, chlorpyrifos, clofencet, endosulfan, ethyl parathion, methyl parathion, and N,N-diethyl-2-(4-methylbenzyloxy) ethylamine. Therefore, EPA is finalizing the amendments proposed concerning these pesticide active ingredients in the **Federal Register** of May 4, 2011 (76 FR 25281). For a detailed discussion of the Agency's rationale for the finalized tolerance actions, refer to the proposed rule of May 4, 2011.

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

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is revoking, modifying, and setting a revocation date for specific tolerances to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides. As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under FFDCA. The safety finding determination is found in detail in each post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA issued a RED for atrazine and among its tolerance recommendations, it stated that certain tolerances should be modified. REDs and TREDs contain the Agency's evaluation of the database for these pesticides, including statements regarding additional data on the active ingredients that may be needed to confirm the potential human health and environmental risk assessments associated with current product uses, and REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are made final in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When do these actions become effective?

As stated in the **DATES** section, this regulation is effective on the date of publication in the **Federal Register**. In this final rule, EPA is revoking certain tolerances for chloroneb, clofencet, endosulfan, methidathion, and methyl parathion with specific expiration/revocation dates, and setting a revocation date for specific endosulfan tolerances. EPA is revoking certain tolerances for chlorpyrifos, endosulfan, ethyl parathion, methyl parathion, and N,N-diethyl-2-(4-methylbenzyloxy) ethylamine, modifying certain tolerances for atrazine, revising a single tolerance nomenclature, revising certain tolerance expressions, and removing certain expired tolerances on the date of publication of this final rule in the **Federal Register**. With the exception of the aforementioned tolerances for which EPA is revoking with expiration/

revocation dates or setting a revocation date for specific endosulfan tolerances, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the revoked tolerances have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade. As proposed in the May 4, 2011 document, EPA is revoking specific chloroneb, clofencet, endosulfan, methidathion, and methyl parathion (except for peanut) tolerances with expiration/revocation dates of April 16, 2012, July 14, 2012, various dates, December 31, 2016, and December 31, 2013. The Agency believes that these revocation dates allow users to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade. Also, in the cases of endosulfan and methyl parathion, these revocation dates are also consistent with a Memorandum of Agreement between the registrants and the Agency.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for atrazine, chloroneb, clofencet, N,N-diethyl-2-(4-methylbenzyloxy)ethylamine, ethyl parathion, or MRL on lettuce for chlorpyrifos.

The Codex has established MRLs for endosulfan in or on various commodities including melons, except watermelon at 2 mg/kg and tea, green, black at 30 mg/kg. These MRLs are different than the tolerances established for endosulfan in the United States because of differences in use patterns and/or good agricultural practices.

The Codex has established MRLs for methidathion in or on various commodities including apple at 0.5 mg/kg; cherries at 0.2 mg/kg; cottonseed at 1 mg/kg; nectarine at 0.2 mg/kg; olives at 1 mg/kg; peach at 0.2 mg/kg; pear at 1 mg/kg; and plums (including prunes) at 0.2 mg/kg. These MRLs are different than the tolerances established for methidathion in the United States because of differences in use patterns and/or good agricultural practices.

The Codex has established MRLs for methyl parathion (parathion-methyl) in or on various commodities including potato at 0.05 mg/kg. The MRL is different than the tolerance established for methyl parathion in the United States because of differences in use patterns and/or good agricultural practices.

IV. Statutory and Executive Order Reviews

In this final rule, EPA is revoking, modifying, and setting a revocation date for specific tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (*e.g.,* modification and establishment of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020) (FRL–5753–1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of the proposed rule, as mentioned in Unit II.A.). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action

will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 6, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.121 is amended by revising paragraph (a) to read as follows:

§ 180.121 Methyl parathion; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide methyl parathion, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only methyl parathion, *O,O*-dimethyl *O*-(4-nitrophenyl) phosphorothioate, in or on the commodity.

Commodity	Parts per million	Expiration/ Revocation date
Alfalfa, forage	1.25	12/31/13
Alfalfa, hay	5.0	12/31/13
Almond	0.1	12/31/13
Almond, hulls	3.0	12/31/13
Barley	1.0	12/31/13
Corn, field, forage	1.0	12/31/13
Corn, field, grain	1.0	12/31/13
Corn, pop, grain	1.0	12/31/13
Corn, sweet, forage	1.0	12/31/13
Corn, sweet, kernel plus cob with husks removed	1.0	12/31/13
Cotton, undelinted seed	0.75	12/31/13
Grass, forage	1.0	12/31/13
Oat	1.0	12/31/13
Onion	1.0	12/31/13
Pea, field, vines	1.0	12/31/13
Potato	0.1	12/31/13
Rapeseed, seed	0.2	12/31/13
Rice, grain	1.0	12/31/13
Soybean, hay	1.0	12/31/13
Soybean, seed	0.1	12/31/13
Sunflower, seed	0.2	12/31/13
Sweet potato, roots	0.1	12/31/13
Walnut	0.1	12/31/13
Wheat	1.0	12/31/13

* * * * *

§ 180.122 [Removed]

■ 3. Section 180.122 is removed.

■ 4. Section 180.182 is amended by revising paragraphs (a) and (c) to read as follows:

§ 180.182 Endosulfan; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide endosulfan, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of endosulfan, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin 3-oxide (alpha and beta isomers), and its metabolite endosulfan sulfate, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide, calculated as the stoichiometric equivalent of endosulfan, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Almond	0.3	7/31/12
Almond, hulls	1.0	7/31/12
Apricot	2.0	7/31/12
Bean	2.0	7/31/12
Broccoli	3.0	7/31/12
Brussels sprouts	2.0	7/31/12
Cabbage	4.0	7/31/12
Cantaloupe	1.0	7/31/12
Carrot, roots	0.2	7/31/12
Cattle, fat	13.0	7/31/16
Cattle, liver	5.0	7/31/16
Cattle, meat	2.0	7/31/16
Cattle, meat byproducts, except liver	1.0	7/31/16
Cauliflower	2.0	7/31/12
Celery	8.0	7/31/12
Cherry, sweet	2.0	7/31/12
Cherry, tart	2.0	7/31/12
Collards	2.0	7/31/12
Cotton, gin byproducts	30.0	7/31/12
Cotton, undelinted seed	1.0	7/31/12
Cucumber	1.0	7/31/12
Eggplant	1.0	7/31/12
Goat, fat	13.0	7/31/16
Goat, liver	5.0	7/31/16
Goat, meat	2.0	7/31/16
Goat, meat byproducts, except liver	1.0	7/31/16
Hazelnut	0.2	7/31/12
Hog, fat	13.0	7/31/16
Hog, liver	5.0	7/31/16
Hog, meat	2.0	7/31/16
Hog, meat byproducts, except liver	1.0	7/31/16
Horse, fat	13.0	7/31/16
Horse, liver	5.0	7/31/16
Horse, meat	2.0	7/31/16
Horse, meat byproducts, except liver	1.0	7/31/16
Kale	2.0	7/31/12
Lettuce, head	11.0	7/31/12
Lettuce, leaf	6.0	7/31/12
Milk, fat	2.0	7/31/16
Muskmelon	1.0	7/31/12
Mustard greens	2.0	7/31/12
Mustard, seed	0.2	7/31/12
Nectarine	2.0	7/31/12
Nut, macadamia	0.2	7/31/12
Peach	2.0	7/31/12
Pear	2.0	7/31/13
Pineapple	1.0	7/31/16
Pineapple, process residue	20.0	7/31/16
Plum	2.0	7/31/12
Plum, prune	2.0	7/31/12
Sheep, fat	13.0	7/31/16
Sheep, liver	5.0	7/31/16
Sheep, meat	2.0	7/31/16
Sheep, meat byproducts, except liver	1.0	7/31/16
Squash, summer	1.0	7/31/12
Strawberry	2.0	7/31/16
Sweet potato, roots	0.15	7/31/12
Walnut	0.2	7/31/12
Watermelon	1.0	7/31/12

* * * * *

(c) Tolerances with regional registrations. (1) Tolerances with regional registration, as defined in § 180.1(l), are established for residues of the insecticide endosulfan, including its metabolites and degradates, in or on the commodities in the table in this paragraph, when endosulfan is used in the state of Florida. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of endosulfan, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin 3-oxide (alpha and beta isomers), and its metabolite endosulfan sulfate, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide, calculated as the stoichiometric equivalent of endosulfan, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Apple	1.0	12/31/14
Apple, wet pomace	5.0	12/31/14
Blueberry	0.3	12/31/14
Corn, sweet, forage	12.0	12/31/14
Corn, sweet, kernel plus cob with husks removed	0.2	12/31/14
Corn, sweet, stover	14.0	12/31/14
Pepper	2.0	12/31/14
Potato	0.2	12/31/14
Pumpkin	1.0	12/31/14
Squash, winter	1.0	12/31/14
Tomato	1.0	12/31/14

(2) Tolerances with regional registrations. Tolerances with regional registration, as defined in § 180.1(l), are established for residues of the insecticide endosulfan, including its metabolites and degradates, in or on the commodities in the table in this paragraph, when endosulfan is used in the United States (except Florida). Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of endosulfan, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin 3-oxide (alpha and beta isomers), and its metabolite endosulfan sulfate, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide, calculated as the stoichiometric equivalent of endosulfan, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Apple	1.0	7/31/15
Apple, wet pomace	5.0	7/31/15
Blueberry	0.3	7/31/15
Corn, sweet, forage	12.0	7/31/15
Corn, sweet, kernel plus cob with husks removed	0.2	7/31/15
Corn, sweet, stover	14.0	7/31/15
Pepper	2.0	7/31/15
Potato	0.2	7/31/15
Pumpkin	1.0	7/31/15
Squash, winter	1.0	7/31/15
Tomato	1.0	7/31/15

* * * * *

■ 5. Section 180.220 is amended by revising the table in paragraph (a) to read as follows:

§ 180.220 Atrazine; tolerances for residues.

(a) * * *

Commodity	Parts per million
Cattle, fat	0.02
Cattle, meat	0.02
Cattle, meat byproducts	0.02
Corn, field, forage	1.5
Corn, field, grain	0.20
Corn, field, stover	0.5
Corn, pop, forage	1.5
Corn, pop, grain	0.20
Corn, pop, stover	0.5
Corn, sweet, forage	15
Corn, sweet, kernel plus cob with husks removed	0.20
Corn, sweet, stover	2.0
Goat, fat	0.02
Goat, meat	0.02
Goat, meat byproducts	0.02
Grass, forage	4.0
Grass, hay	4.0
Guava	0.05
Horse, fat	0.02
Horse, meat	0.02
Horse, meat byproducts	0.02
Milk	0.02
Nut, macadamia	0.20
Sheep, fat	0.02
Sheep, meat	0.02
Sheep, meat byproducts	0.02
Sorghum, forage, forage	0.25
Sorghum, grain, forage	0.25
Sorghum, grain, grain	0.20
Sorghum, grain, stover	0.50
Sugarcane, cane	0.20
Wheat, forage	1.5
Wheat, grain	0.10
Wheat, hay	5.0
Wheat, straw	0.50

* * * * *

■ 6. Section 180.257 is amended by revising paragraph (a) to read as follows:

§ 180.257 Chloroneb; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide chloroneb, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of chloroneb, 1,4-dichloro-2,5-dimethoxybenzene, and its metabolite 2,5-dichloro-4-methoxyphenol (free and conjugated), calculated as the stoichiometric equivalent of chloroneb, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Bean, dry, seed	0.2	4/16/12
Bean, succulent	0.2	4/16/12
Beet, sugar, roots	0.2	4/16/12
Beet, sugar, tops	0.2	4/16/12
Cowpea, forage	2.0	4/16/12
Cowpea, hay	2.0	4/16/12
Cattle, fat	0.2	4/16/12
Cattle, meat	0.2	4/16/12
Cattle, meat byproducts	0.2	4/16/12
Cotton, gin byproducts	1.0	4/16/12
Cotton, undelinted seed	0.2	4/16/12
Goat, fat	0.2	4/16/12
Goat, meat	0.2	4/16/12
Goat, meat byproducts	0.2	4/16/12
Hog, fat	0.2	4/16/12
Hog, meat	0.2	4/16/12
Hog, meat byproducts	0.2	4/16/12
Horse, fat	0.2	4/16/12
Horse, meat	0.2	4/16/12
Horse, meat byproducts	0.2	4/16/12
Milk	0.05	4/16/12
Sheep, fat	0.2	4/16/12
Sheep, meat	0.2	4/16/12
Sheep, meat byproducts	0.2	4/16/12
Soybean, forage	2.0	4/16/12
Soybean, hay	2.0	4/16/12
Soybean, seed	0.2	4/16/12

* * * * *

■ 7. Section 180.298 is amended by revising paragraphs (a) and (c) to read as follows:

§ 180.298 Methidathion; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide methidathion, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only methidathion, *S*-[(5-methoxy-2-oxo-1,3,4-thiadiazol-3(2*H*)-yl)methyl] *O,O*-dimethyl phosphorodithioate, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Almond, hulls	6.0	12/31/16
Artichoke, globe	0.05	12/31/16
Citrus, oil	420.0	12/31/16
Cotton, undelinted seed	0.2	12/31/16
Fruit, citrus, group 10, except tangerine	4.0	12/31/16
Fruit, pome, group 11	0.05	12/31/16
Fruit, stone, group 12	0.05	12/31/16
Mango	0.05	12/31/16
Nut, tree, group 14	0.05	12/31/16
Olive	0.05	12/31/16
Safflower, seed	0.5	12/31/16
Sorghum, forage, forage	2.0	12/31/16
Sorghum, grain, forage	2.0	12/31/16
Sorghum, grain, grain	0.2	12/31/16
Sorghum, grain, stover	2.0	12/31/16
Sunflower, seed	0.5	12/31/16
Tangerine	6.0	12/31/16

* * * * *

(c) Tolerances with regional registrations. Tolerances with regional registration, as defined in § 180.1(l), are established for residues of the insecticide methidathion, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only methidathion, *S*-[(5-methoxy-2-oxo-1,3,4-thiadiazol-3(2*H*)-yl)methyl] *O,O*-dimethyl phosphorodithioate, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Kiwifruit	0.1	12/31/16
Longan	0.1	12/31/16
Starfruit	0.1	12/31/16
Sugar apple	0.2	12/31/16

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.342 [Amended]

■ 9. Section 180.342 is amended by removing the entry for ''lettuce'' from the table in paragraph (a)(1).

* * * * *

■ 8. Section 180.319 is revised to read as follows:

§ 180.319 Interim tolerances.

(a) *General.* While petitions for tolerances for negligible residues are pending and until action is completed on these petitions, interim tolerances are established for residues of the listed pesticide chemicals in or on the following raw agricultural commodities:

Substances	Uses	Tolerance in parts per million	Raw agricultural commodity	Expiration/ revocation date
Coordination product of zinc ion and maneb	Fungicide	1.0 (Calculated as zinc ethylene-bisdithio-carbamate).	Potato	None.
Endothall (7-oxabicyclo-(2,2,1) heptane 2,3-dicarboxylic acid.	Herbicide	0.2	Beet, sugar	None.
Isopropyl carbanilate (IPC)	Herbicide	5.0	Alfalfa, hay; clover, hay; and grass, hay	None.
		2.0	Alfalfa, forage; clover, forage; and grass, forage.	None.
		0.1	Flax, seed; lentil; lettuce, head; lettuce, leaf; pea; safflower, seed; spinach; beet, sugar, roots; and beet, sugar, tops.	None.
		0.5	Egg; cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; sheep, fat; sheep, meat; sheep, meat byproducts; poultry, fat; poultry, meat; and poultry, meat byproducts.	None.
Methyl parathion	Herbicide	0.5	Rye	12/31/13.

■ 10. Section 180.497 is revised to read as follows:

§ 180.497 Clofencet; tolerances for residues.

(a) *General.* Tolerances are established for residues of the plant growth regulator (hybridizing agent) clofencet, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only clofencet, potassium 2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylate, expressed as the free acid, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Cattle, fat	0.04	7/14/12
Cattle, kidney	10.0	7/14/12
Cattle, meat	0.15	7/14/12
Cattle, meat byproducts, except kidney	0.5	7/14/12
Egg	1.0	7/14/12
Goat, fat	0.04	7/14/12
Goat, kidney	10.0	7/14/12
Goat, meat	0.15	7/14/12
Goat, meat byproducts, except kidney	0.5	7/14/12
Hog, fat	0.04	7/14/12
Hog, kidney	10.0	7/14/12
Hog, meat	0.15	7/14/12
Hog, meat byproducts, except kidney	0.5	7/14/12
Horse, fat	0.04	7/14/12
Horse, kidney	10.0	7/14/12
Horse, meat	0.15	7/14/12
Horse, meat byproducts, except kidney	0.5	7/14/12

Commodity	Parts per million	Expiration/ revocation date
Milk	0.02	7/14/12
Poultry, fat	0.04	7/14/12
Poultry, meat	0.15	7/14/12
Poultry, meat byproducts	0.20	7/14/12
Sheep, fat	0.04	7/14/12
Sheep, kidney	10.0	7/14/12
Sheep, meat	0.15	7/14/12
Sheep, meat byproducts, except kidney	0.5	7/14/12
Wheat, forage	10.0	7/14/12
Wheat, grain	250.0	7/14/12
Wheat, hay	40.0	7/14/12
Wheat, straw	50.0	7/14/12

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent residues of the plant growth regulator (hybridizing agent) clofencet, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only clofencet, potassium 2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylate, expressed as the free acid, in or on the commodity when present therein as a result of the application of clofencet to the growing crops in paragraph (a) of this section.

Commodity	Parts per million	Expiration/ revocation date
Grain, cereal, forage, fodder and straw, group 16, except rice, sweet corn, wheat, and wild rice; forage	4.0	7/14/12
Grain, cereal, forage, fodder and straw, group 16, except rice, sweet corn, wheat, and wild rice; hay	15.0	7/14/12
Grain, cereal, forage, fodder and straw, group 16, except rice, sweet corn, wheat, and wild rice; stover	1.0	7/14/12
Grain, cereal, forage, fodder and straw, group 16, except rice, sweet corn, wheat, and wild rice; straw	4.0	7/14/12
Grain, cereal group 15, except rice, sweet corn, wheat, and wild rice	20.0	7/14/12
Soybean	30.0	7/14/12
Soybean, forage	10.0	7/14/12
Soybean, hay	10.0	7/14/12

§ 180.558 [Removed]

■ 11. Section 180.558 is removed.

[FR Doc. 2011–23515 Filed 9–13–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 15

[ET Docket Nos. 04–186 and 02–380; FCC 10–174]

Unlicensed Operation in the TV Broadcast Bands

AGENCY: Federal Communications Commission.

ACTION: Final rules; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements contained in the regulations for issues relating to the unlicensed use of the TV bands (TV White Space). The information collection requirements were approved on September 7, 2011 by OMB.

DATES: The amendments to 47 CFR 15.713, 15.714, 15.715 and 15.717, published at 75 FR 75814, December 6, 2010, are effective on September 14, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams on (202) 418–2918 or via e-mail to: *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that on September 7, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 15.713, 15.714, 15.715 and 15.717. The Commission publishes this document to announce the effective date of the rule sections. See, In the Matter of ''Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, ET Docket Nos. 04–186 and 02–380; FCC 10–174, 75 FR 75814, December 6, 2010.

Synopsis

As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on September 7, 2011, for the information collection requirement contained in 47 CFR 15.713, 15.714, 15.715 and 15.717. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB 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 that does not display a valid OMB Control Number.

The OMB Control Number is 3060–1155 and the total annual reporting burdens for respondents for this information collection are as follows:

Title: Sections 15.713, 15.714, 15.715 and 15.717, TV White Space Broadcast Bands.

Form No.: Not applicable.

Type of Review: New Collection.

OMB Control Number: 3060–1155.

OMB Approval Date: 09/07/2011.

OMB Expiration Date: 09/30/2014.

Respondents: Business or other for-profit.

Number of Respondents: 2,000 respondents; 2,000 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 154(i), 302, 303(c), 303(f), and 307.

Total Annual Burden: 4,000 hours.

Total Annual Cost: $100,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. Respondents may request that portions of their information remain confidential in accordance with 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On November 14, 2008, the Commission adopted a Second Report and Order and Memorandum Opinion and Order, FCC 08–260, ET Docket No. 04–186 that established rules to allow new and unlicensed wireless devices to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services (this unused TV spectrum is often termed television ''white spaces''). The rules will allow for the use of unlicensed TV band devices in the unused spectrum to provide broadband data and other services for consumers and businesses.

Subsequently on September 23, 2010, the Commission adopted a Second Memorandum Opinion and Order finalizing the rules to make the unused spectrum in the TV bands available for unlicensed broadband wireless devices. This action resolved on reconsideration certain legal and technical issues in order to provide certainty concerning the rules for operation of unlicensed transmitting devices in the television broadcast frequency bands (unlicensed TV bands devices or ''TVBDs''). Resolution of these issues will now allow manufacturers to begin marketing unlicensed communications devices and systems that operate on frequencies in the TV bands in areas where they are not used by licensed services (''TV white spaces'').

In the Second Report and Order the Commission decided to designate one or more database administrator from the private sector to create and operate TV band databases. The TV band database administrators will act on behalf of the FCC, but will offer a privately owned and operated service. Each database administrator will be responsible for operation of their database and coordination of the overall functioning of the database with other administrators, and will provide database access to TVBDs.

The Commission also decided that operators of venues using unlicensed wireless microphones will be allowed to register their sites with the Commission which will transmit the information to the database administrators. The registration request must be filed at least 30 days in advance and the requests will be made public to provide an opportunity for public comment or objections.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–23426 Filed 9–13–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 79

[MB Docket No. 11–43; FCC 11–126]

Video Description Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

ACTION: Final rules; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements contained in the regulations for issues relating to the video description rules. The final information collection requirements were approved on September 8, 2011 by OMB. The Commission received OMB preapproval for the proposed requirements on April 22, 2011. The information collection requirements were adopted as proposed.

DATES: The amendments to 47 CFR 79.3(d) and (e), published at 76 FR 55585, September 8, 2011, are effective on October 11, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams on (202) 418–2918 or via e-mail to: *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that on September 8, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 79.3(d) and (e). The Commission publishes this document to announce the effective date of the rule sections. See, In the Matter of Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11–43; FCC 11–126, 76 FR 55585, September 8, 2011.

Synopsis

As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on September 8, 2011, for the information collection requirement contained in 47 CFR 79.3(d) and (e). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB 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 that does not display a valid OMB Control Number.

The OMB Control Number is 3060–1148 and the total annual reporting burdens for respondents for this information collection are as follows:

Title: Video Description of Video Programming.

Form No.: Not applicable.

Type of Review: New Collection.

OMB Control Number: 3060–1148.

OMB Approval Date: 09/08/2011.

OMB Expiration Date: 04/30/2014.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 76 respondents; 80 responses.

Estimated Time Per Response: 1–5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary and required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 613(f).

Total Annual Burden: 144 hours.

Total Annual Cost: $26,250.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries'', in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

Privacy Act Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_*

Impact_Assessment.html. The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: The Commission received final approval for the information collection requirements contained in MB Docket No. 11–43; FCC 11–126 from the Office of Management and Budget (OMB) on September 8, 2011. This rulemaking contains information collection requirements that support the Commission's video description rules that would be codified at 47 CFR 79.3, as required by the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''). In 2000, the Commission adopted rules requiring certain broadcasters and multichannel video program distributors (MVPDs) to carry programming with video description. The United States Court of Appeals for the District of Columbia Circuit vacated the rules due to insufficient authority soon after their initial adoption. The CVAA directs the Commission to reinstate those rules, with certain modifications, on October 8, 2011.

The information collection requirements consist of:

Petitions for exemption based on ''economic burden.''

Pursuant to 47 CFR 79.3(d), a video programming provider may petition the Commission for a full or partial exemption from the video description requirements based upon a showing that they would be economically burdensome.

Petitions for exemption must by filed with the Commission, placed on Public Notice, and be subject to comment from the public.

Complaints alleging violations of the video description rules.

Section 79.3(e) provides that a complaint alleging a violation of the video description rules may be transmitted to the Commission by ''any reasonable means'' that would best accommodate the complainant's disability, and that each complaint must include:

The name and address of the complainant;

The name and address of the broadcast station against whom the complaint is alleged and its call letters and network affiliation, or the name and address of the MVPD against whom the complaint is alleged and the name of the network that provides the programming that is the subject of the complaint;

A statement of facts sufficient to show that the video programming distributor has violated or is violating the Commission's rules, and, if applicable, the date and time of the alleged violation;

The specific relief or satisfaction sought by the complainant;

The complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's disability); and

A certification that the complainant attempted in good faith to resolve the dispute with the broadcast station or MVPD against whom the complaint is alleged.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–23382 Filed 9–13–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XA690

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the western zone of the Gulf of Mexico (Gulf) to commercial king mackerel fishing in the exclusive economic zone (EEZ). This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective noon, local time, September 16, 2011, until 12:01 a.m., local time, on July 1, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, 727–824–5305, fax: 727–824–5308, *e-mail: Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Commercial fishing for the Gulf migratory group of king mackerel in the western zone is managed under a quota of 1.01 million lb (0.46 million kg) (66 FR 17368, March 30, 2001) for the current fishing year, July 1, 2011, through June 30, 2012.

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be reached by September 16, 2011. Accordingly, the western zone is closed effective noon, local time, September 16, 2011, through June 30, 2012, the end of the fishing year to commercial fishing for Gulf group king mackerel. The boundary between the eastern and western zones is 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zone taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the western zone of the Gulf to commercial king mackerel fishing constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule implementing the quota and the associated requirement for closure of the commercial harvest when the quota is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment on this action would be contrary to the public interest because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: September 9, 2011.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–23507 Filed 9–9–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 178
Wednesday, September 14, 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 ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2011–BT–TP–0012]

RIN 1904–AC45

Energy Conservation Program: Test Procedures for General Service Fluorescent Lamps, General Service Incandescent Lamps, and Incandescent Reflector Lamps

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to revise its test procedures for general service fluorescent lamps (GSFLs) and general service incandescent lamps (GSILs) established under the Energy Policy and Conservation Act (EPCA). DOE is not proposing changes to the existing test procedure for incandescent reflector lamps (IRLs) established under EPCA. For GSFLs and GSILs, DOE is proposing to update several citations and references to the industry standards currently referenced in DOE's test procedures. DOE is also proposing to establish a lamp lifetime test procedure for GSILs. Additionally, in this NOPR, DOE is requesting comments on all aspects of the GSFL, GSIL, and IRL test procedures and whether any further amendments are necessary. DOE's review of the GSFL, GSIL, and IRL test procedures fulfills the EPCA requirement that DOE review test procedures for all covered products at least once every seven years. Finally, DOE is proposing to extend the compliance certification date for GSILs so as to be consistent with the compliance date of the amended test procedure. DOE is also announcing a public meeting to discuss and receive comments on the issues presented in this rulemaking.

DATES: *Meeting:* DOE will hold a public meeting on October 4, 2011, from 9 a.m. to 5 p.m., in Washington, DC, for both this rulemaking on test procedures for GSFLs, GSILs, and IRLs, as well as the rulemaking on GSFL and IRL energy conservation standards. The meeting will also be broadcast as a Webinar. See section V, ''Public Participation,'' for Webinar registration information, participant instructions, and information about the capabilities available to Webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than November 28, 2011. See section V, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Brenda Edwards at the phone number above to initiate the necessary procedures.

Any comments submitted must identify the NOPR for Test Procedures for General Service Fluorescent Lamps, General Service Incandescent Lamps, and Incandescent Reflector Lamps and provide docket number EERE–2011–BT–TP–0012 and/or regulatory information number (RIN) 1904–AC45. Comments may be submitted using any of the following methods:

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

2. *E-mail: Lamps-2011-TP-0012@ee.doe.gov.* Include the docket number and/or RIN 1904–AC45 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket is available for review at *http://www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page on the regulations.gov site can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.* The *http://www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for information on how to submit comments through *http://www.regulations.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, please contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Dr. Tina Kaarsberg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. Telephone: (202) 287–1393. E-mail: *Tina.Kaarsberg@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000

Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

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I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. These include general service fluorescent lamps (GSFLs), general service incandescent lamps (GSILs), and incandescent reflector lamps (IRLs), the subject of today's notice (referred to below as one of the ''covered products'').[2] (42 U.S.C. 6292(a)(14) and 6295(i))

Under the Act, this program generally consists of four parts: (1) Testing; (2) labeling; and (3) establishing Federal energy conservation standards and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use: (1) As the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA, and (2) for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test requirements in determining whether covered products comply with any relevant energy conservation standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures that DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine the extent to which the proposed test procedure would alter the measured energy efficiency. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter significantly the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

Relevant to this rulemaking, EPCA, as codified, directs DOE to prescribe test procedures for GSFLs and IRLs to which energy conservation standards are applicable, taking into consideration the applicable standards of the Illuminating Engineering Society of North America [3] (IESNA) or the American National Standards Institute [4] (ANSI). (42 U.S.C. 6293(b)(6))

In addition, on December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, was enacted. Section 321 of EISA 2007 amended EPCA, in relevant part, to prescribe energy conservation standards for GSILs that included maximum rated wattage and minimum rated lifetime requirements for several different lumen ranges; these standards will be phased in between 2012 and 2014. (42 U.S.C. 6295(i)) Section 302 of EISA 2007 also amended EPCA to require DOE to review test procedures for all covered products at least once every seven years. DOE must either amend the test procedures or publish notice in the **Federal Register** of any determination not to amend a test procedure. (42 U.S.C. 6293(b)(1)(A))

Accordingly, to fulfill these statutory requirements for periodic review, in this NOPR, DOE invites comment on all aspects of the existing test procedures for GSFLs, GSILs, and IRLs that appear at Title 10 of the Code of Federal Regulations (CFR): 10 CFR 429.27 (''General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps''), 10 CFR 430.2 (''Definitions''), 10 CFR 430.3 (''Materials incorporated by reference''), 10 CFR 430.23 (''Test procedures for the measurement of energy and water consumption''), 10 CFR 430.25 (''Laboratory Accreditation Program''), and 10 CFR part 430 subpart B, Appendix R (''Uniform Test Method for Measuring Average Lamp Efficacy (LE), Color Rendering Index (CRI), and Correlated Color Temperature (CCT) of Electric Lamps'').

To address prior EPCA requirements for GSFLs, GSILs, and IRLs, DOE has undertaken a number of rulemaking actions pertaining to the test procedures for these products. On September 28, 1994, DOE published in the **Federal Register** an Interim Final Rule on Test Procedures for Fluorescent and Incandescent Lamps that established

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this rulemaking refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

[3] Illuminating Engineering Society of North America (IESNA) standards can be purchased on the IESNA Web site at: *http://www.ies.org/store/.*

[4] American National Standards Institute (ANSI) standards can be purchased on the ANSI Web site at: *http://www.webstore.ansi.org/.*

test procedures for GSFLs, medium-base compact fluorescent lamps (CFLs), IRLs, and GSILs. 59 FR 49468 (establishing 10 CFR part 430, subpart B, Appendix R). On May 29, 1997, DOE published a final rule in the **Federal Register** on Test Procedures for Fluorescent and Incandescent Lamps that revised some definitions and calculation methods and updated several references to industry standards adopted in the September 1994 Interim Final Rule. 62 FR 29222.

Subsequently, DOE amended its GSFL, GSIL, and IRL test procedures in a final rule published in the **Federal Register** on July 6, 2009 (hereinafter referred to as the 2009 Lamps Test Procedure). 74 FR 31829. This final rule made the following technical modifications to the test procedures: (1) Required testing of GSFLs to be based on low-frequency reference ballasts, except for those lamps that can only be tested on high-frequency ballasts; (2) required lamp efficacy for GSFLs to be rounded to the nearest tenth of a lumen per watt, rather than the nearest whole number; (3) adopted a test method for measuring and calculating correlated color temperature (CCT) for fluorescent lamps and incandescent lamps; and (4) updated citations and references to industry standards referenced in DOE's test procedures. Additionally, because EISA 2007 promulgated energy conservation standards for certain GSILs, DOE also amended its test procedures for GSILs by: (1) Specifying the units to be tested; (2) defining the ''basic model'' for GSILs; and (3) providing a method for calculating annual energy consumption and efficacy of GSILs.

In a separate rulemaking that amended GSFL and IRL energy conservation standards, DOE adopted standards for additional general service fluorescent lamp types and also established test procedures for those lamps. These test procedure amendments included specific reference ballast settings for testing those additional GSFLs. 74 FR 34080, 34095–96 (July 14, 2009).

The current test procedures for GSFLs, GSILs, and IRLs are specified in various sections of the CFR and are based on the 1997 and 2009 final rules addressing test procedures for fluorescent and incandescent lamps. 62 FR 29222 (May 29, 1997); 74 FR 31829 (July 6, 2009); 74 FR 34080 (July 14, 2009). Calculations for lamp efficacy of GSFLs, GSILs, and IRLs and for color rendering index of GSFLs are discussed in 10 CFR 430.23, which references 10 CFR part 430, subpart B, Appendix R. Appendix R also specifies several IESNA and ANSI standards to use for test conditions and procedures. For GSFLs, it references measurement procedures set forth in IESNA LM–9–1999.[5] Additionally, GSFL are to be operated according to general procedures for taking electrical measurements described in ANSI C78.375–1997,[6] and at the voltage and current conditions described in ANSI C78.81–2005 (double-based lamps)[7] or ANSI C78.901–2005 (single-based lamps),[8] and using the reference ballast at input voltage specified by the reference circuit in ANSI C82.3–2002.[9] Appendix R also notes that the measurement procedures for GSILs and IRLs are set forth in IESNA LM–45–2000[10] and IESNA LM–20–1994,[11] respectively.

II. Summary of the Notice of Proposed Rulemaking

In overview, in addition to requesting comment on all aspects of the current GSFL, GSIL, and IRL test procedures, this NOPR proposes to amend DOE's current test procedures for GSFLs and GSILs based on DOE's review of the existing test procedures. These amendments would achieve two objectives: (1) To update test procedures by incorporating certain lighting industry standards by reference in order to adopt current best practices and technological developments and (2) to adopt a new test procedure for determining GSIL rated lifetime. If the revisions and additions proposed by this test procedure NOPR were adopted, their use would be required for standards compliance purposes upon the effective date of the test procedure final rule (*i.e.,* 30 days after its publication).

Regarding the first objective (*i.e.,* updating references in DOE's existing test procedures to incorporate current best practices and technological developments), today's notice proposes updating references for the industry standards incorporated by reference to the latest versions of those documents. For GSFLs, DOE is proposing to update references ANSI C78.81–2005 to ANSI C78.81–2010[12] and from IESNA LM–9–1999 to IES LM–9–2009[13] for measuring the electrical and photometric attributes. For GSILs, DOE proposes updating references from IESNA LM–45–2000 to IES LM–45–2009[14] for measuring their electrical and photometric attributes. This NOPR is not proposing changes to the current IRL test procedures, because no updated version of the relevant industry standard, IESNA LM–20–1994, has been published, nor do current best practices and technological developments appear to warrant such an update.

DOE has identified and outlined in section III.B the modifications and clarifications found in the most recent versions of the industry standards for GSFLs and GSILs, as compared to the versions of those same standards currently incorporated by reference in DOE's test procedures. These changes will not, in DOE's view, significantly alter reported lamp efficacy values.

Regarding the second objective (*i.e.,* adoption of a GSIL rated lifetime test procedure), today's notice proposes incorporating by reference industry standard, IESNA LM–49–2001.[15] As noted above, EISA 2007 amended EPCA, in part, by establishing energy conservation standards for GSILs which include for the first time minimum rated lifetime requirements that are to be phased in between January 2012 and January 2014. DOE must now address GSIL lifetimes in an amended test procedure for GSILs. EPCA's definition of lamp ''life'' and ''lifetime'' requires that DOE make this amendment in accordance with test procedures described in the IES Lighting Handbook—Reference Volume. (42 U.S.C. 6291(30)(P))

To initiate the development of a test procedure for determining GSIL rated lifetime, DOE conducted literature research and interviews with several GSIL lifetime testing facilities and

[5] ''IESNA Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps'' (approved Dec. 4, 1999).

[6] ''American National Standard for electric lamps: Fluorescent Lamps-Guide for Electrical Measurements'' (approved Sept. 25, 1997).

[7] ''American National Standard for Electric Lamps Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics'' (approved August 11, 2005).

[8] ''American National Standard for Electric Lamps Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics'' (approved March 23, 2005).

[9] ''American National Standard For Lamp Ballasts-Reference Ballasts for Fluorescent Lamps'' (approved Sept. 4, 2002).

[10] ''IESNA Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps'' (approved May 8, 2000).

[11] ''IESNA Approved Method for Photometric Testing Of Reflector-Type Lamps'' (approved Dec. 3, 1994).

[12] ''American National Standard for Electric Lamps-Double-Capped Fluorescent Lamps-Dimensional and Electrical Characteristics'' (approved Jan. 14, 2010).

[13] ''IES Approved Method for the Electrical and Photometric Measurement of Fluorescent Lamps'' (approved Jan. 31, 2009).

[14] ''IES Approved Method for the Electrical and Photometric Measurement of General Service Incandescent Filament Lamps'' (approved Dec. 14, 2009).

[15] ''IESNA Approved Method for Life Testing of Incandescent Filament Lamps'' (approved Dec. 1, 2001).

determined that IESNA LM–49–2001 aligns with guidance in the IESNA Lighting Handbook, and is also the industry standard for GSIL lifetime testing. Additionally, DOE has tentatively concluded this industry standard adequately covers the test setup, conditions, and procedures for GSIL lifetime testing. Therefore, in order to meet the EISA 2007 requirements for GSIL lifetimes that will begin going into effect in January 2012, this notice proposes to incorporate by reference IESNA LM–49–2001 to establish the test procedure for determining rated lifetime of GSILs.

The following sections detail changes associated with the revised versions of the applicable industry standards incorporated by reference (IES LM–9–2009 and IES LM–45–2009) and summarize DOE's proposed test procedure for the GSIL rated lifetime.

Lastly, DOE discusses the compliance date for use of the amended test procedure and certifying compliance with DOE's energy conservation standards.

III. Discussion

A. Seven-Year Test Procedure Review

In undertaking this rulemaking, DOE is fulfilling its statutory obligation under section 302 of EISA 2007 to review its test procedures for all covered products, including GSFL, GSIL, and IRL, at least once every seven years. (42 U.S.C. 6293(b)(1)(A)) DOE must either: (1) Amend the test procedure to improve its measurement representativeness or accuracy or reduce its burden, or (2) determine that such amendments are unnecessary. *Id.* Although DOE is proposing revisions to only certain parts of the existing test procedures (see sections III.A.1, III.A.2, and III.A.3), DOE invites comments on all aspects of DOE's test procedures for GSFL, GSIL, and IRL, including those provisions appearing at 10 CFR 429.27, 10 CFR 430.2, 10 CFR 430.23, 10 CFR 430.25, and 10 CFR 430, subpart B, Appendix R. (See Issue 1 in section V.E), as well as comments on current best practices and technological developments that may warrant amendments.

B. Updates to Industry Standards Incorporated by Reference

Because the current GSFL, GSIL, and IRL test procedures are based mainly on references to industry standards, this review, in part, consists of determining whether or not to adopt the updated version of these standards. Industry periodically updates its test procedure standards to account for changes in product lines and/or developments in test methodology and equipment. In its review of these industry standards, DOE compared updated and current versions to determine, as directed by EPCA, whether adopting the latest industry standards would alter measured energy efficiency. (42 U.S.C. 6293(e)(1)) In addition, in considering whether to adopt an updated standard, DOE must ensure that a revision to DOE's regulations would not result in a test procedure that is unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

After reviewing the industry standards incorporated by reference for the existing GSFL, GSIL, and IRL test procedures as well as current best practices and technological developments, DOE tentatively identified appropriate updates for the GSFL and GSIL test procedures, but no updates for the IRL test procedure. For GSFLs, DOE is proposing to update references to the 1999 version of IES LM–9 to the 2009 version and references to the 2005 version of ANSI C78.81 to the 2010 version. For GSILs, DOE proposes to update references to the 2000 version of IES LM–45 to the 2009 version. DOE is proposing to adopt the latest versions of IES LM–9 and IES LM–45, as they include requirements that will increase the precision of measurements and clarifications of existing test setup and methodology. The updated version of ANSI C78.81 provides lamp specifications for additional lamp types that may become useful in the future. Adoption of these latest versions will also better align DOE test procedures with industry practice, thereby potentially reducing testing burden.

Generally, DOE has determined that the changes associated with adoption of the updated versions of industry standards referenced in the existing test procedures for the products that are the subject of this NOPR would not be unduly burdensome for manufacturers, nor would they result in a change in measured lamp efficacy values, as they are not making substantive changes to test setup and methodology. In its review of the updated versions of industry standards, DOE identified some provisions in the revised industry test procedures that could potentially result in small changes in lamp efficacy values (*e.g.,* modifications to impedance thresholds, voltage and current regulations). However, DOE tentatively determined that these potential changes in lamp efficacy values from the modified provisions would not be significant.[16] Nevertheless, DOE requests comments on its assessment (see Issues 2 and 3 in section V.E). The following sections discuss in more detail each of the updated industry standards and their provisions that could potentially result in small changes in lamp efficacy values.

1. ANSI C78.81–2010 for General Service Fluorescent Lamps

The existing GSFL test procedure at 10 CFR part 430, subpart B, Appendix R incorporates by reference ANSI C78.81–2005, addressing dimensional and electrical characteristics for double-capped fluorescent lamps. This 2005 standard, a revision to ANSI C78.81–2003, is also referenced in DOE's definitions of ''cold-temperature fluorescent lamp'' and ''rated wattage.'' (See 10 CFR 430.2) In addition, ANSI C78.81–2003 is currently referenced in parts of DOE's test procedure for fluorescent lamp ballasts. (See 10 CFR part 430, subpart B, Appendix Q) In this NOPR, DOE proposes to update all reference to ANSI C78.81 (both 2003 and 2005) to now reference ANSI C78.81–2010 in DOE's test procedures and definitions relating to GSFLs and fluorescent lamp ballasts. The 2010 version adds high-frequency and low-frequency lamp specifications for reduced-wattage 4-foot T8 medium bipin lamps. While DOE's current test procedures do not require the use of these specifications, they may become relevant in DOE's ongoing assessment of whether industry has provided high-frequency lamps specifications for all GSFL covered by standards and subsequently, if DOE should consider requiring GSFLs be tested using high-frequency ballasts. Furthermore, if upcoming GSFL energy conservation standards rulemakings adopt additional lamp types, incorporating the latest version of ANSI C78.81 may necessitate little or no changes to DOE test procedures in terms of specifications for the new lamp types.

Section 1 (''Definitions'') of Appendix Q (''Uniform Test Method for Measuring Energy Consumption of Fluorescent Lamp Ballasts'') to the DOE test procedure refers to specific datasheets in ANSI C78.81–2003 to identify dimensional and electrical characteristics for the following lamps: F40T12, F96T12, F96T12HO, F34T12, F96T12ES, F96T12HO/ES. DOE has

[16] In this document, changes in efficacy that are described as ''not significant'' are considered to be within measurement error or variation. DOE tentatively concludes that these amendments do not affect reported efficacy values to the extent that would warrant modifications to energy conservation standards.

determined that 2003 datasheets referenced in Appendix Q are identical to the corresponding datasheets in the 2010 version of ANSI C78.81. As updating references to ANSI C78.81–2003 to ANSI C78.81–2010 in Appendix Q does not constitute a substantive change to the fluorescent lamp ballast test procedure, DOE concludes that such amendments would not result in any changes in testing burden or a change in measured energy consumption as compared to the current DOE test procedure.

In comparing ANSI C78.81–2010 to the 2005 version of the standard, DOE notes that the only change is to include high-frequency and low-frequency lamp specifications for 25W, 28W, and 30W, reduced-wattage 4-foot T8 medium bipin lamps. These lamps, commonly used as replacements for a 32W 4-foot T8 medium lamp, are newer products and only recently have been added to the ANSI standard. The low-frequency reference ballast specifications in ANSI C78.81–2010 for these lamps are identical to the specifications DOE currently directs manufacturers to use for those fluorescent lamps in section 4.1.2.1 of Appendix R.[17] Therefore, neither measured efficacy nor testing burden would be affected by updating the current references in the DOE test procedure to ANSI C78.81–2010. Thus, DOE proposes to update all references to ANSI C78.81 (both the 2003 and 2005 version) in 10 CFR part 430 to the 2010 version of the standard.

2. IES LM–9–2009 for General Service Fluorescent Lamps

IESNA LM–9–1999 specifies procedures for measuring the efficacy of GSFLs. As discussed above, this industry standard has been updated with a 2009 edition. DOE is proposing to update references to IESNA LM–9–1999 to the more recent 2009 version of the standard.[18] A review indicates that incorporating the 2009 edition of IES LM–9 could provide further clarification of the test procedure and improve the test methodology and test instrumentation setup and specifications. DOE has identified the following four key updates in the 2009 edition of IES LM–9 and discusses them in greater detail below. Specifically, IES LM–9–2009:

- Adds information on conducting tests under high-frequency conditions;
- Modifies the lamp stabilization method;
- Specifies temperature and orientation for stabilization of T5 lamps; and
- Specifies impedance[19] thresholds for the multipurpose volt, amperes, and watts (VAW) meter and power source, where previously only general guidance was provided.

One of the key updates in IES LM–9–2009 is the addition of guidance on taking measurements under high-frequency conditions when using high-frequency ballasts. Because high-frequency test specifications are not available for all lamp types and in order to maintain consistency and comparability across testing, DOE required testing of GSFLs using low-frequency ballasts where possible in the 2009 Lamps Test Procedure final rule.[20] 74 FR 31829, 31835 (July 6, 2009). This NOPR does not propose to change this requirement. Because 8-foot T8 recessed double-contact high-output and 4-foot T5 miniature bipin standard and high-output lamps only have high-frequency reference ballasts specifications available, the DOE test procedure directs manufacturers to use high-frequency test conditions for these lamps.

IES LM–9–2009 now provides some guidance for testing in high-frequency situations, specifically regarding instrument thresholds and circuit setup. As noted above, DOE requires GSFLs testing using low-frequency ballasts where possible. However, the high-frequency guidance in IES LM–9–2009 would be applicable for lamps that only have high-frequency ballast specifications available and, therefore, cannot be tested using low-frequency ballasts. IES LM–9–2009 specifies for high-frequency measurements that root mean square (RMS) voltage applied to the test lamp be regulated to within ± 1.0 percent of the reference ballast voltage setting and that instruments have a frequency response[21] of at least 100 kilohertz (kHz). For measurements under high-frequency operation, the industry standard specifies that lamps be operated in series with a non-inductive reference resistor ballast,[22] as specified in ANSI C78.81–2010. IES LM–9–2009 also states that when the impedance is not specified in a standard, the value is to be set to one half of the lamp impedance under high-frequency conditions. High-frequency-specific impedance, along with current and input voltage for reference ballasts, are necessary parameters for testing under high-frequency conditions. The industry standard also clarifies that for high-frequency circuits, cathode heating should not be used when the lamp is in operation. DOE has tentatively concluded that for lamps that can only be tested at high frequency, the impact of the new guidance provided in IES LM–9–2009 regarding high-frequency testing would be useful, and it would not significantly impact lamp efficacy measurements (which would likely be within the margin of measurement error). Furthermore, DOE's analyses indicate that most modern equipment would accommodate the thresholds specified in IES LM–9–2009 for high-frequency testing, and, thus, they would not impose an additional testing burden on manufacturers since new testing instruments would not be required to run the test. DOE requests comment on whether the clarification on high-frequency testing provided would affect lamp efficacy values and/or significantly increase the testing burden (see Issue 2 in section V.E).

In addition, IES LM–9–2009 includes modifications to the lamp stabilization methodology. IES LM–9–2009 now prescribes six (instead of four) measurements at one-minute intervals for a total of five (instead of three) minutes. It also removes the requirement that the stability percentage be two percent for lamps with cold spots/chambers, leaving only the general one-percent stability threshold. Additionally, IES LM–9–2009 requires that stabilization measurements continue until six consecutive measurements meet the stabilization criteria. These modifications to the lamp stabilization method allow for more accurate and consistent measurements of lamp efficacy. After review, DOE has tentatively concluded that the 2009 version provides a stricter stabilization method, but one that is consistent with industry standards. DOE requests comments on the impact of these proposed changes in stabilization methodology on lamp efficacy values (see Issue 2 in section V.E).

[17] DOE's current test procedure for 4-foot medium bipin lamps specifies that testing be done using low-frequency reference ballast specifications.

[18] The 2009 version of the standard is labeled as IES instead of IESNA

[19] A measure of the total opposition to current flow in an alternating current (AC) circuit made up of resistance and reactance, ''reactance'' is the opposition of a circuit element to a change of electric current or voltage, due to the element's capacitance or inductance. For a direct current (DC) circuit, the impedance is just the resistance.

[20] One exception to this rule would be 8-foot T8 recessed double-contact high-output and 4-foot T5 miniature bipin standard and high-output lamps, which only have high-frequency reference ballasts specifications listed in ANSI C78.81–2005.

[21] ''Frequency response'' is the measure of a system's output frequency spectrum in response to an input signal.

[22] A high-frequency reference ballast has only resistive elements, while a low-frequency reference ballast includes inductors.

IES LM–9–2009 also prescribes lamp stabilization characteristics unique to T5 linear fluorescent lamps. To obtain stable photometric results in 25 °C (77 °F) air, it recommends keeping the mercury dose in the test lamp close to the equilibrium temperature and vapor pressure. IES LM–9–2009 also specifies that T5 lamps are to be seasoned [23] in the vertical orientation, even though they are measured horizontally. Stable light output is reached when all the liquid mercury is in the cold spot, which by industry convention is at the monogrammed end of the lamp. Therefore, T5 lamps are operated in a vertical position to keep the mercury dose at one end of the lamp. IES LM–9–2009 references IESNA LM–54–1999 [24] for further guidance on this procedure. Upon review, DOE has tentatively concluded that the addition of the T5 lamp stabilization method, as proposed, would address stability characteristics specific to these lamp types, but it would not be expected to alter measured lamp efficacy.

IES LM–9–2009 also specifies impedance thresholds for the multipurpose volt, amperes, and watts (VAW) meter and power source. The VAW meter voltage input must have input impedance greater than one megaohm; and the electrical current input impedances may not exceed 10 milliohms.[25] IES LM–9–2009 also prohibits power source impedance greater than two percent of the ballast impedance. For high-frequency power supplies, the 2009 version adds the note that it is impossible to meet this power source impedance limit internally, so external control circuits are used to keep the output voltage at the desired level. This modification addresses the need for low impedance in order to ensure accurate measurements, but DOE does not expect that it would significantly affect lamp efficacy measurements. DOE has tentatively concluded that because the updates to impedance limitations mainly affect error correction and ensure accurate measurements, these changes would not be expected to affect lamp efficacy values. In addition, DOE's research indicates that manufacturers' existing instrument setups should meet the impedance thresholds prescribed and, therefore, would not pose an additional testing burden.

In addition to the above mentioned updates, IES LM–9–2009 provides recommendations and further guidance that remove a number of ambiguities in the previous version (*e.g.,* updates to sources of measurement errors, definitions, and references). Because these proposed updates do not involve substantive changes to the test setup and methodology, but rather just clarification, DOE has tentatively concluded they would not affect lamp efficacy measurements or pose an additional testing burden.

For the reasons discussed above, DOE has tentatively concluded that substituting the 2009 version of IES LM–9 for the version (1999) currently incorporated in the DOE test procedure for GSFLs would generally result in more precise measurements and provide further clarification to the DOE test procedures. It would also align DOE's requirements with current industry standards, thereby potentially reducing testing burden. The proposed amendments would not be expected to significantly affect measured lamp efficacy. DOE requests comments on its proposed incorporation of IES LM–9–2009 and its tentative conclusion that the update would have an insignificant impact on lamp efficacy values (see Issue 2 in section V.E).

3. IES LM–45–2009 for General Service Incandescent Lamps

The existing GSIL test procedure at 10 CFR part 430, subpart B, Appendix R incorporates by reference IESNA LM–45–2000 and specifies its use for measuring efficacy of GSILs. As discussed above, this industry standard has been updated with a 2009 edition which is labeled as IES instead of IESNA. DOE is considering updating references from IESNA LM–45–2000 to the 2009 version of the standard. A review indicates that incorporating the 2009 edition of IES LM–45 could provide further clarification of the test procedure and improvements in test methodology. DOE has identified the following five key updates in the 2009 edition of LM–45 and discusses them in greater detail below:

- Modifies the lamp stabilization method;
- Modifies voltage and current regulation tolerances of the alternating current (AC) power source;
- Modifies instrument tolerance for AC voltage, current, and wattage;
- Specifies impedance tolerances for instruments;
- Specifies the tolerance of the spectral response of the photo detector;

The first key update in IES LM–45–2009 is clarification of the lamp stabilization methodology. IES LM–45–2009 specifies that the stability percentage should be calculated by dividing the difference between the maximum and minimum of the five consecutive measurements by the average value of the measurements. IES LM–45–2009 also states that measurements must continue at 15-second intervals until five consecutive measurements meet the stability criteria. These additional specifications in IES LM–45–2009 provide a more precise definition of stabilization, which may improve consistency of test results.

IES LM–45–2009 also contains modified requirements for voltage and current regulation of the AC power source. It specifies that RMS voltage or current is to be regulated to within ± 0.1 percent instead of ± 0.02 percent. The revised standard also changed the instrument tolerances for voltage, current, and wattage measurements for AC, specifying ± 0.5 percent or less for voltage and current and ± 0.75 percent or less for wattage as allowable accuracies. IES LM–45–2000 had stated that uncertainty of voltage and current shall not exceed ± 0.05 for both DC and AC circuits. All else held equal, uncertainty for AC measurements tends to be higher than DC measurements, due to the time-varying properties of AC signals.

While the above mentioned changes in power source regulation and in instrument tolerances could introduce slightly more variation in lamp efficacy measurements, DOE does not expect that these proposed changes would have a significant impact on reported lamp efficacy values, which are based on testing of 21 samples. Additionally, the revised tolerances are closer to those achievable by today's commercially-available equipment being used industry-wide, and, therefore, they would not pose an additional testing burden.

IES LM–45–2009 also adds upper and lower input impedance thresholds for the voltage and the current inputs of the multimeter used for measurements. Under the revised version of the industry standard, the input impedance for the voltage input to the multifunction meter must exceed one megaohm, and the input impedance for the current inputs must be less than 10 milliohms. DOE has tentatively

[23] ''Seasoned'' or ''seasoning'' refers to the initial burning or operation of a lamp with the goal of minimizing time-related changes in lamp operating characteristics.

[24] ''IESNA Guide to Lamp Seasoning'' (approved May 10, 1999).

[25] The 2009 version also removes Annex A, *Corrections to Compensate for Presence of Test Instruments in the Lamp Circuit.* This annex addresses how to account for the change in the circuit caused by the test instruments. IES LM–9–2009 notes, however, that the error introduced to the circuit is negligible when using high-input-impedance (one megaohm or greater) instruments. Because IES LM–9–2009 has been modified to require that voltage input of a multifunction meter have input impedance greater than one megaohm, this annex is no longer relevant.

concluded that these changes would have an insignificant impact on lamp efficacy values. The updates to impedance thresholds mainly affect error correction and ensure accurate measurements. In addition, this change would not pose an additional testing burden, as DOE's research indicates that manufacturers' existing instrument setups should meet the impedance thresholds prescribed.

Both versions of IES LM–45 include a requirement that the photo-detector have a relative spectral responsivity which approximates V(λ), the photopic luminous efficiency function.[26] The V(λ) function represents the response curve of a standard observer, which quantifies the visual sensitivity of the human eye to light at different wavelengths. IES LM–45–2009 adds the specification that the V(λ) parameter, f1′, be less than five percent. The parameter f1′ describes the degree of spectral match of the photo-detector measurements to the V(λ) function. DOE's research indicates that industry commonly considers a value for f1′ of less than five percent good commercial quality and a value of less than three percent good laboratory/research quality. DOE has tentatively concluded that the additional specification of the spectral response tolerance of the photo-detector would not affect lamp efficacy measurements. In addition, DOE research shows that manufacturers already employ at least commercial-grade instruments, and, therefore, this specification would not pose an additional test burden. However, it is useful to explicitly specify the allowable error in spectral response to ensure a certain accuracy of photometric measurements.

For the reasons discussed above, DOE has tentatively concluded that substituting the 2009 version of IES LM–45 for the 2000 version currently incorporated in the DOE test procedure for GSILs would result in more precise measurements and provide further clarification to the DOE test procedures. Updating to the latest version would also better align DOE's requirements with current industry standards and best practices. The proposed amendments would not be expected to significantly affect measured lamp efficacy. DOE requests comments on its proposed incorporation of LM–45–2009 and its tentative conclusion that the update would have an insignificant impact on lamp efficacy values and testing burden (see Issue 3 in section V.E).

C. Test Procedures for Incandescent Reflector Lamps

The existing IRL test procedure at 10 CFR part 430, subpart B, Appendix R incorporates by reference IESNA LM–20–1994 [27] for measuring efficacy of IRLs. At the time of publication of this NOPR, a revised edition of this standard had not been published. Upon review DOE has determined that existing test procedures for IRLs are appropriate for measuring efficacy and continue to not impose an undue testing burden. Further, DOE is not aware of any current best practice or technical development that necessitates modifications to the existing test procedure. Therefore, no amendments to IRL test procedures are proposed. DOE requests comment on its assessment that no updates to the IRL test procedure are needed and welcomes any suggestions for amendments (see Issue 4 in section V.E).

D. General Service Incandescent Lamp Lifetime Testing

Section 321 of EISA 2007 amended EPCA by prescribing for the first time for GSILs, minimum rated lifetime [28] requirements to be phased in between January 2012 and January 2014 (codified at 42 U.S.C. 6295(i)(1)). EPCA defines ''life'' and ''lifetime'' as the length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group, in accordance with test procedures described in the IESNA Lighting Handbook Reference Volume. (42 U.S.C. 6291(30)(P))

The rated lifetime of a general service incandescent lamp depends mainly on the rate of vaporization of the surface of the tungsten filament due to the high filament temperatures required during lamp operation. The tungsten filament generates the light in incandescent lamps when a current is passed through it, which heats the filament by electrical resistance. As the filament evaporates and shrinks, its resistance increases, thereby reducing current, power, and light in multiple circuits.[29] Light output is also reduced by the deposit of light-absorbing tungsten particles on the bulb surface. When the filament breaks, it interrupts the electrical circuit, thereby resulting in an inoperable lamp.

1. Selection of Industry Standard

As stated above, EPCA defines the term ''lifetime'' in part by referencing test procedures in the IESNA Lighting Handbook.[30] The IESNA Lighting Handbook provides guidance on two methods of testing GSIL lifetime: (1) At rated voltage; and (2) at overvoltage (also known as accelerated lifetime testing). DOE notes that the rated voltage testing guidance in the IESNA Lighting Handbook generally coincides with IESNA LM–49–2001. (See discussion in section III.D.3 below for further details on accelerated lifetime testing.) In light of its common usage in the industry and its similarity to the test procedure in the IESNA Lighting Handbook, DOE is proposing to incorporate by reference IESNA LM–49–2001, ''IESNA Approved Method for Life Testing of Incandescent Filament Lamps'' (approved Dec. 1, 2001), into the DOE test procedure for measuring GSIL lifetime, in order for there to be an appropriate test method in place by the compliance date for the GSIL minimum lifetime standard levels established by EISA 2007.

DOE notes, however, that the IESNA Lighting Handbook test procedures depart from those described in IESNA LM–49–2001 in one way: the IESNA Lighting Handbook requires test voltage or current be held within ± 0.25 percent of rated voltage/current, whereas IESNA LM–49–2001 requires test voltage or current be held within ± 0.5 percent of rated RMS values. As IESNA LM–49–2001 is the more commonly used reference for GSIL lifetime testing, DOE is proposing to stay with the voltage/current regulation prescribed in IESNA LM–49–2001. DOE also has tentatively concluded that this difference in voltage regulation specification would have an insignificant impact on lifetime testing and would reduce testing burden by providing a somewhat wider tolerance.

DOE also considered IEC 60064–2005 [31] which contains similar test conditions and procedures as IESNA LM–49–2001. After speaking to representatives from major lighting testing facilities, however, DOE found that IESNA LM–49–2001 is the more common reference for GSIL lifetime testing, which suggests it is the more workable approach. Further evidence of the IESNA standard's usage is the

[26] The Commission International de l'Eclairage (CIE) established the photopic luminous efficiency function as the response curve of a standard observer. IESNA Lighting Handbook, Ninth Edition (2000) p. 1–6.

[27] ''IESNA Approved Method for Photometric Testing of Reflector-Type Lamp,'' (approved Dec. 3, 1994).

[28] DOE is proposing to use the term ''rated lifetime'' rather than ''rate lifetime,'' which is the term used in the statutory standards for GSILs prescribed by EISA 2007. (42 U.S.C. 6295(i)) DOE believes ''rated'' is more commonly used in industry.

[29] IESNA Lighting Handbook, Ninth Edition (2000) p. 6–13.

[30] IESNA Lighting Handbook, Ninth Edition (2000) p. 2–24.

[31] ''International Standard: Tungsten filament lamps for domestic and similar general lighting purposes—Performance requirements'' (approved 2005).

Federal Trade Commission (FTC) reference to IESNA LM–49 in its regulations for product labeling of GSILs. 16 CFR 305.5(b). By adopting the same industry standard for purposes of compliance with energy conservation standards and FTC labeling, DOE would minimize the need for additional testing. IESNA LM–49–2001 adequately covers ambient conditions, test setup (lamp orientation, power supply specifications, instrumentation), and operating cycle methodology, thereby providing a comprehensive test procedure for testing GSIL lifetime. DOE requests comments on its proposal to adopt IESNA LM–49–2001 as the standard for GSIL lifetime testing (see Issue 5 in section V.E). The following section describes the test procedures laid out in IESNA LM–49–2001.

2. Summary of IESNA LM–49–2001

Similar to EPCA, section 1.2 of IESNA LM–49–2001 defines ''rated lifetime'' as the statistically-determined estimate of median operational lifetime, where median is the total operating time under which, at normal operating conditions, 50 percent of a large group of initially installed lamps is expected to be still operating. IESNA LM–49–2001 prescribes testing lifetime of an incandescent lamp at its rated voltage, and it requires the lamp to be checked for failure at certain intervals and to be cooled on a daily basis.

Section 3.2 of IESNA LM–49–2001 provides instrument specifications that require lamps to be operated at their rated voltage for voltage-rated lamps or at their rated current for current-rated lamps, and at 60 Hertz (Hz). When using an AC power supply, the voltage wave shape is to be such that total harmonic distortion does not exceed three percent of the fundamental. As mentioned previously, the referenced industry standard also specifies that regardless of whether AC or DC power supply is used, voltage or current must be regulated to within ± 0.5 percent of its rated RMS value for the duration of the lifetime test as a design consideration for the lifetime test system. IESNA LM–49–2001 specifies test conditions for vibration, temperature, and airflow. It addresses orientation, spacing, handling, and marking of the lamps, as well as specifications for the lamp holders.

The method for lamp lifetime testing detailed in IESNA LM–49–2001 allows for an elapsed time meter to monitor operating time. The referenced industry standard further states that it is permissible to use video monitoring, current monitoring, or other means that are designed to provide sufficient temporal accuracy. The procedure specifies that lamp failure is determined by either visual observation or automatic monitoring at intervals of no more than 0.5 percent of the rated lifetime. It requires that for normal lifetime testing, lamps be cooled to ambient temperature once per day and specifies cooling time as usually 15 to 30 minutes per day.

3. Accelerated Lifetime Testing

IESNA LM–49–2001 permits accelerated lifetime testing for non-halogen GSILs. In principle, an accelerated lifetime test measures a shortened lamp lifetime and scales it to determine the full lifetime of the lamp, thereby reducing total testing time required and overall test burden. DOE has tentatively determined, however, that industry lacks a consistent methodology for developing GSIL scaling factors for halogen lamps (which are expected to comprise the vast majority of compliant GSILs). Thus, as detailed in the next section, DOE has tentatively decided not to allow the use of accelerated lifetime testing for GSILs as part of this test procedure.

Accelerated lifetime testing involves operating lamps at higher than rated voltage, thereby forcing the lamp to fail faster. A scaling factor is used to correlate the measured accelerated lifetime to the lifetime at the rated voltage. The appropriate scaling factor, critical in obtaining accurate accelerated lifetime results, is determined by conducting a certain number of comparison parallel lifetime tests at rated voltage and overvoltage. The IESNA Lighting Handbook notes that scaling factors are empirical and that their determination requires many comparison tests at rated voltages.[32]

Additionally, IESNA LM–49–2001 limits accelerated lifetime testing methodology to non-halogen lamps. Accurate accelerated lifetime testing can be difficult to conduct for halogen lamps due to the tungsten-halogen regenerative cycle. This cycle, intended to increase lamp lifetime by redepositing evaporated tungsten back onto the filament, is designed around certain operating temperatures; deviations from the rated voltage would change the operating temperature and potentially alter or introduce new modes of lamp failure. Even if accurate scaling factors (to relate overvoltage lifetime testing to rated voltage lifetime testing) could be empirically derived for halogen lamps, unique scaling factors would likely need to be developed for each lamp design. Alterations in filament or halogen capsule designs could affect the tungsten-halogen regenerative cycle and, therefore, the scaling factor. Due to the extensive testing necessary to develop these scaling factors for each basic model, DOE tentatively concludes that accelerated lifetime testing for halogen lamps would not significantly reduce testing burden.

Since few non-halogen GSILs will meet the 2012 energy conservation standards, and given the minimal impact on testing burden and potential inaccuracies introduced, DOE has tentatively decided to disallow the use of accelerated lifetime testing for GSILs as part of this test procedure. DOE requests comments on its assessment that accelerated lifetime test should not be incorporated as part of the DOE test procedure (see Issue 6 in section V.E).

4. Sample Size

For GSIL lifetime measurements, DOE is proposing a minimum sampling size of 20 lamps: a minimum of two lamps per month for seven months of production out of a 12-month period. If lamp production occurs in fewer than seven months out of the year, two or more lamps will be selected for each month that production exists as evenly as possible to meet the minimum 20 sample requirement. These seven months do not need to be consecutive and can be any combination of seven months out of the twelve available. DOE has tentatively concluded that 20 samples is consistent with the statutory definition of ''lifetime,'' that requires that such sample be based on ''statistically large group of lamps.'' This selection of 20 lamps as the sample size is also consistent with DOE's regulations for measuring lamp efficacy, which currently specify a sampling size of a minimum of three lamps for each month of production for a minimum of seven months (not necessarily consecutive) out of the 12-month period, totaling a minimum of 21 lamps. 10 CFR 429.27 This 21-lamp sample size was selected to promote statistically valid results without imposing an undue testing burden on manufacturers. 62 FR 29222, 29229 (May 29, 1997) DOE has chosen 20 samples (an even number) instead of 21 samples in order to facilitate the calculation of the 50 percent failure rate. This sample size also allows manufacturers the opportunity to test the same sample set for measurements of lumen output, wattage, and lifetime, thereby potentially reducing testing burden. DOE requests comments on this assessment and whether alternative

[32] IESNA Lighting Handbook, Ninth Edition (2000) pp. 2–24.

sample sizes should be used instead (see Issue 7 in section V.E).

5. ''Rated Lifetime'' Definition

In addition to incorporating by reference IESNA LM–49–2001 as the test procedure for GSIL lifetime testing, DOE is also proposing to define ''rated lifetime'' as the parameter that should be used to determine whether the lamp meets minimum rated lifetime standards. The rated lifetime for general service incandescent lamps will be defined as the length of operating time between first use and failure of 50 percent of the sample size in accordance with test procedures described in IESNA LM–49–2001. This proposed definition of ''rated lifetime'' is consistent with the existing statutory definition of ''life'' or ''lifetime,'' which describes this parameter as the length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook. (42 U.S.C. 6291(30)(P)) Since DOE is proposing to adopt IESNA LM–49–2001 as the standard industry reference for GSIL lifetime testing, the GSIL ''rated lifetime'' definition will reference IESNA LM–49–2001 rather than the IES Lighting Handbook.

6. Certification Requirements and Laboratory Accreditation

10 CFR 429.12(e) specifies that for most covered products, including GSILs, certification reports of new models must be submitted before products are distributed into commerce. However, for GSFLs and IRLs, because reported values are based on testing of samples over a 12-month period of production, DOE requires manufacturers to submit an initial certification report prior to or concurrent with distribution of the new model. This initial certification report filing, describing how the manufacturer has determined that the new model meets or exceeds energy conservation standards, allows manufacturers to distribute new models while completing the 12-month sampling requirement for certification of GSFLs and IRLs. This initial report is then followed by a final certification report, based on the full sampling provisions, to be submitted a year after the first date of manufacture of the new model.

Since DOE also requires a 12-month sampling period for certification of GSILs, today's notice is proposing to implement new model filing requirements, similar to those for GSFLs and IRLs, for GSILs. Just as with GSFLs and IRLs, DOE is proposing to require that the final certification report be submitted one year following the start of manufacturing of the new model. DOE proposes this time period for final certification for GSIL testing to account for the time it takes to measure lamp lifetime as part of GSIL testing. Lifetime testing of a 1000-hour rated lamp (the minimum rated lifetime standard) would require lamp operation for a minimum of 42 days. Since the sample is taken over a 12-month span and only requires sampling from 7 months of the year, DOE believes that several months after the last month of the sampling period are necessary to complete testing, given that some GSILs have rated lifetimes longer than 1000 hours. Consequently, DOE is proposing a total of 12 months after the date of manufacture of the new model, allowing manufacturers sufficient time to conduct lifetime testing for all GSILs manufactured in a 12-month production period. DOE requests comment on its proposal regarding GSIL certification filing requirements. (See Issue 8 in section V.E).

Additionally, when conducting compliance testing for GSIL lifetime, DOE proposes to require that such testing be conducted by a facility accredited by the National Volunteer Laboratory Accreditation Program (NVLAP) [33] or by an organization recognized by NVLAP. NVLAP accreditation is a finding of laboratory competence, certifying that a laboratory operates in accordance with NVLAP management and technical requirements. The NVLAP program is described in 15 CFR part 285, and it encompasses the requirements of ISO/IEC 17025.[34] DOE has determined that NVLAP imposes fees of $9,000 and $8,000 on years one and two of accreditation. For the years following, the fees alternate between $5,000 and $8,000, with the $8,000 fee corresponding to the on-site evaluation required every other year. Fees for other accreditation organizations are expected to be similar. DOE does not expect this requirement for GSIL lifetime testing to impose a significant burden for most manufacturers, because efficacy testing of GSILs is already required to take place at a laboratory that is accredited by either NVLAP or an NVLAP-recognized organization. Accordingly, manufacturers should be able to meet this requirement with minimal change or incremental burden.

7. Effective Date and Compliance Date for the Amended Test Procedures and Compliance Date for Submitting GSIL Certification Reports

The effective date for these test procedure amendments would be 30 days after publication of the test procedure final rule in the **Federal Register**. At that time, manufacturers and importers of covered GSFLs, IRLs, and GSILs may use the amended test procedure for making representations of the energy efficiency of each basic model. Additionally for GSFLs and IRLs, manufacturers may use the amended test procedure or the existing test procedures to certify compliance with DOE's test procedure. Should manufacturers or importers elect to use the new test procedure and applicable sampling plans prior to the compliance date of the amended test procedure, this would need to be noted on the certification report.

The compliance date for certifying compliance with the Department's regulations and for making any representations of the energy efficiency derived from the revised version of the test procedure for GSFLs, IRLs, and GSILs is 180 days from the date of publication of the test procedure final rule in the **Federal Register**. On or after that date, any such representations, including those made on marketing materials and product labels, must be based upon results generated under these amended test procedures and the applicable sampling plans. At that time, manufacturers and importers of covered GSFLs, IRLs, and GSILs must use the amended test procedures when certifying compliance to the Department. For example, for GSFLs and IRLs after the compliance date, if the test procedure amendments in conjunction with the applicable sampling plans proposed today alter the energy use in a manner which results in the basic model being less efficient, then the manufacturer or importer would be required to revise the existing certification. Otherwise, any changes to the certified ratings for GSFLs and IRLs may be submitted in the next annual certification filing due on the 1st of March.

To reduce confusion, DOE is proposing to amend the initial compliance date for submitting GSIL certification reports for those products subject to standards on January 1, 2012, by approximately 5 months so as to be concurrent with the compliance date of

[33] NVLAP is a program administered by the National Institute of Standards and Technology (NIST).

[34] International Organization for Standardization/International Electrotechnical Commission, General requirements for the competence of testing and calibration laboratories. ISO/IEC 17025 (available at:_ *http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=39883*).

the amended test procedure. Thus, under this proposal, for GSILs that have energy conservation standards effective January 1, 2012, certification would not be required until 180 days after publication of the test procedure final rule in the **Federal Register**. At that time, these test procedure amendments and sampling plans, including the new lifetime requirements, would need to be used to develop the certified ratings in order to certify compliance 180 days after publication of the test procedure final rule in the **Federal Register**.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this regulatory action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) 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 DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.*

Today's proposed rule would adopt test procedure provisions for GSFLs and GSILs, primarily through updates to current active industry testing standards, as well as specification of a procedure for testing GSIL lifetime. In referencing the updated versions of the industry test method, DOE anticipates that there would be no incremental increase in testing cost or burden for covered products, because the updated versions are not making substantial changes to test setup or methodology. In this NOPR, DOE is also proposing to establish a test procedure for GSIL lifetime testing and recommending the incorporation by reference of IESNA LM–49–2001 as the basis for this test procedure. The proposed GSIL lifetime test procedure will provide an appropriate test method for the purposes of compliance with the GSIL minimum lifetime standard levels established by EISA 2007. DOE has tentatively determined that the proposed GSIL lifetime test procedure would not pose undue testing costs or burdens on manufacturers of covered products. DOE has reviewed the proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. For the reasons explained below, DOE concludes and certifies that this test procedure rulemaking would not have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) has set a size threshold for manufacturers of GSFLs, GSILs, and IRLs that defines those entities classified as ''small businesses'' for the purposes of the Regulatory Flexibility Analysis. DOE used the SBA's small business size standards to determine whether any small manufacturers of GSFLs, GSILs, and IRLs would be subject to the requirements of the rule. 65 FR 30836, 30849 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.* GSFL, GSIL, and IRL manufacturing is classified under NAICS 335110, ''Electric Lamp Bulb and Part Manufacturing.'' The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category.

In the 2009 rulemaking that set standards for GSFLs and IRLs, DOE identified 12 companies as potential small business manufacturers of GSFLs and IRLs covered by standards. After further research including interviews with companies, DOE identified only one company as a small business manufacturer of covered GSFLs and no company as a small business manufacturer of covered IRLs. 74 FR 34080, 34174 (July 14, 2009) Through an analysis conducted in this rulemaking, DOE identified six small business manufacturers of covered GSILs (see below for further details). Since DOE does not anticipate the proposed incorporation of updated versions of the industry test methods for GSFLs, GSILs, and IRLs would result in significant changes in test setup and methodology, DOE does not expect a significant economic impact on small business manufacturers of GSFLs, GSILs and IRLs.

DOE conducted further analysis to determine that the proposed new test procedure provisions for testing GSIL lifetime would not have a significant impact on small business manufacturers of GSILs. DOE compiled a preliminary list of potential small business manufacturers of GSILs by searching Hoover's and the SBA databases and referencing a list of small business manufacturers for GSILs identified in the 2009 rulemaking for GSFLs and IRLs.[35] DOE then determined if the companies actually manufactured GSILs by reviewing the company Web site and/or calling the company. Through this process, DOE was able to identify six small business U.S. manufacturers of GSILs.

DOE then estimated the cost of testing GSIL lifetime for a certain number of lamps. The initial setup for lamp lifetime testing can take from one day (if using sockets attached to an Edison plug and power strips) to two weeks (for a custom-built rack). The cost for a custom-built rack that can accommodate up to 100 lamps could be about $3,000. DOE understands that manufacturers of GSILs would already have the other necessary testing instrumentation, because this same equipment is used for determination of GSIL efficacy.

In addition to materials, labor also contributes to the overall testing burden of GSIL lifetime testing. The GSIL lifetime test procedure requires accurate monitoring of operating time and checking for lamp failure at intervals of 0.5 percent of the rated lifetime (*e.g.,* five-hour intervals for a lamp with a rated lifetime of 1000 hours). Rather than have a technician inspect the lamp at the end of each interval, a still camera with a programmable snapshot system to record lamp operation can reduce the labor cost. Alternatively, a test lab could monitor operating time using a baffled photodiode pointing at each lamp location with a software program reading photodiode signals at regular intervals. This method would increase initial costs by requiring equipment costing about $18,000 to $20,000 per

[35] The list had been compiled in the advanced notice of proposed rulemaking (ANOPR) stage of the rulemaking for GSFLs and IRLs, at which point proposing standards for GSILs was within the scope of the rulemaking. (See Chapter 3 of the ANOPR TSD; available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/lamps_anopr_tsd/lamps_tsd_chap3.pdf.*)

100 lamps and a one-time setup that could take at least a month with three full-time staff, but which would reduce overall labor costs.

DOE based its estimates of labor costs on the still camera method, as it expects more laboratories to have this capability. About three hours per week would be required to review images of 100 lamps, and assuming the typical average rated lifetime of 1,000 hours, it would require six weeks to conduct a lifetime test of a lamp. Therefore, a total of 18 hours would be required to conduct lifetime testing for 100 lamps. DOE used the labor rate of $100 per hour and a sampling size of 20 lamps (see section III.D). DOE surveyed small manufacturers of GSILs to determine a number of models produced per year by a typical small business. Based on the six responses received, DOE determined that small manufacturers are producing anywhere from four to 50 models of GSILs, with an average of 30 models.[36] Based on these parameters, the labor costs of GSIL lifetime testing for one reporting period is estimated to be $1,800 for four models, $10,800 for 30 models, and $18,000 for 50 models. In addition, if manufacturers need to build 100-lamp custom test racks, the initial cost setup is estimated to be $3,000 for four models (one test rack), $18,000 for 30 models (six test racks), and $30,000 for 50 models (10 test racks). However, DOE believes that most GSIL manufacturers would already have sufficient testing racks for their own internal uses and for FTC labeling requirement testing.

For the maximum number of 50 models, assuming testing apparatus is already available, the labor costs to carry out testing to demonstrate all products comply with standards would be approximately $18,000. In subsequent years, testing costs would be much smaller, likely less than 10 percent of the initial cost, because only new products or redesigned products would need to be tested. Assuming a conservative estimate of $1 million in revenue for a small business, initial testing costs would represent about two percent of revenue, but when amortized over subsequent years with little or no testing, testing costs would represent less than one percent of revenue. In addition, some businesses may already have lifetime data that could be used for compliance purposes from previously completed FTC labeling testing. Based upon its comparison of estimated revenue to estimated testing costs, DOE has tentatively concluded that labor costs would not be significant enough to pose a substantial burden on small manufacturers. DOE requests comments on its analysis of initial setup and labor costs for conducting lifetime testing of GSILs (see Issue 9 in section V.E).

In this NOPR, DOE is also proposing to require test facilities conducting GSIL lifetime and efficacy compliance testing to be NVLAP accredited or accredited by an organization recognized by NVLAP. If accreditation were sought for the first time, DOE has determined that NVLAP imposes fees of $9,000 and $8,000 on years one and two of accreditation. For the years following, the fees alternate between $5,000 and $8,000, with the $8,000 fee corresponding to the on-site evaluation required every other year. However, DOE does not expect this requirement to impose a significant burden for most manufacturers, because efficacy testing of GSILs is already required to take place at a laboratory accredited either by NVLAP or a NVLAP-recognized organization (see section III.D.6).

Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b). DOE certifies that this rule would have no significant impact on a substantial number of small entities. DOE seeks comment regarding whether the proposed amendments in today's rule would have a significant economic impact on any small entities (see Issue 9 in section V.E).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of GSFLs, GSILs, and IRLs must certify to DOE that their products comply with any applicable energy conservation standard. In certifying compliance, manufacturers must test their products according to the DOE test procedure for GSFLs, GSILs, or IRLs, including any amendments adopted for that test procedure. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including GSFLs, GSILs, and IRLs. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB. Public reporting burden for the certification is estimated to average 20 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.

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.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects would be used to develop and implement future energy conservation standards for GSFLs, GSILs, and IRLs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (Pub. L. 91–190, codified at 42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, Appendix A, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 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

[36] As noted, these findings were based on a survey of six small manufacturers of GSIL. Only a few manufacturers had models that would meet these standards at this time. However, the survey accounted for all covered GSIL models regardless of whether or not they would meet the EISA 2007 standards for GSIL, under the assumption that manufacturers will eventually be producing a comparable number of compliant models.

statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 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; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) 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 sections 3(a) and 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.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501, *et seq.*) 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), (b)) Section 204 of 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 them. 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.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year. Accordingly, no further assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule to amend DOE test procedures 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.

I. Review Under Executive Order 12630

DOE has determined under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (Pub. L. 106–554, codified at 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 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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 OMB 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.

Today's regulatory action to amend the test procedure for measuring the energy efficiency of GSFLs, GSILs, and IRLs is not a significant regulatory action under Executive Order 12866 or any successor order. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, DOE has tentatively determined that this rule is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule would incorporate testing methods contained in the following commercial standards: IES LM–9–2009, ''IES Approved Method for Electrical and Photometric Measurements of Fluorescent Lamps;'' IES LM–45–2009, ''IES Approved Method for Electrical and Photometric Measurement of General Service Incandescent Filament Lamps;'' IESNA LM–49–2001, ''IESNA Approved Method for Life Testing of Incandescent Filament Lamps;'' and ANSI C78.81–2010, ''American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics.'' The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

V. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak and Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include with their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification

of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Email submissions are preferred. If you submit via mail or hand delivery, please provide all items on a compact disc (CD), if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comments on all aspects of DOE's test procedures for GSFL, GSIL, and IRL See section III.A for further detail.

2. For GSFL test procedures, DOE requests comments on its proposed incorporation of IES LM–9–2009, and its tentative conclusion that the update would neither significantly affect measured lamp efficacy nor increase testing burden. In particular, DOE requests comments on the impact on lamp efficacy of high-frequency testing amendments and modifications to the lamp stabilization procedure in LM–9–2009. See section III.B.2 for further detail.

3. For GSIL test procedures, DOE requests comments on its proposed incorporation of IES LM–45–2009, and its tentative conclusion that the update would neither significantly affect lamp efficacy values nor impose undue testing burden. See section III.B.3 for further detail.

4. DOE requests comment on whether any amendments to the IRL test

procedure are necessary. See section III.C for further detail.

5. For GSIL lifetime test procedures, DOE requests comments on its proposal to incorporate by reference IESNA LM–49–2001 as the basis for GSIL lifetime testing. See section III.D.1 for further detail.

6. For GSIL lifetime test procedures, DOE requests comments on its proposal to disallow accelerated lifetime testing as part of the GSIL test procedure. See section III.D.2 for further detail.

7. DOE requests comments on its proposal to require a minimum sample size of 20 lamps for GSIL lifetime measurements. See section III.D.4 for further detail.

8. For GSIL lifetime test procedures, DOE requests comment on its proposal regarding GSIL certification filing requirements. See section III.D.6 for further detail.

9. DOE seeks comment regarding whether the proposed amendments in today's rule would have a significant economic impact on any small entities. In particular, DOE requests comments on its preliminary analysis of initial setup and labor costs for conducting lifetime testing of GSILs. See section IV.B for further detail.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Buildings and facilities, Business and industry, Energy conservation, Grants programs—energy, Housing, Reporting and recordkeeping requirements, Technical assistance.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, September 6, 2011.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of Chapter II of Title 10, Subchapter D of the Code of Federal Regulations to read as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 429.12 is amended by:

a. Revising paragraph (e)(2); and

b. Adding new paragraph (i)(7).

The revisions and additions read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(e) * * *

(2) For general service fluorescent lamps, incandescent reflector lamps, or general service incandescent lamps: Prior to or concurrent with the distribution of a new basic model, each manufacturer shall submit an initial certification report listing the basic model number, lamp wattage, and date of first manufacture (*i.e.,* production date) for that basic model. The certification report must also state how the manufacturer determined that the lamp meets or exceeds the energy conservation standards, including a description of any testing or analysis the manufacturer performed. Manufacturers of general service fluorescent lamps, incandescent reflector lamps, and general service incandescent lamps must submit the certification report required by paragraph (b) of this section within one year after the first date of new model manufacture.

* * * * *

(i) * * *

(7) General service incandescent lamps, [*date to be inserted 180 days from publication of test procedure final rule*].

3. Section 429.27 is amended by

a. Removing in paragraph (a)(2)(i), first sentence, ''*,* general service incandescent lamp,'';

b. Adding in paragraph (a)(2)(ii) ''and general service incandescent lamp'' after ''general service fluorescent lamp''; and removing the words, ''paragraph (a)(2)(i)'' and adding in their place, the words, ''paragraphs (a)(2)(i) and (a)(2)(iii)'';

c. Adding new paragraphs (a)(2)(iii) and (a)(2)(iv); and

d. Revising paragraph (b)(2)(iii).

The revisions and additions read as follows:

§ 429.27 General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.

(a) * * *

(2) * * *

(iii) For each basic model of general service incandescent lamp, for measurements of rated wattage and rated lumen output, samples of production lamps shall be obtained from a 12-month period, tested, and the results averaged. A minimum sample of 21 lamps shall be tested. The manufacturer shall randomly select a minimum of three lamps from each month of production for a minimum of 7 out of the 12-month period. In the instance where production occurs during fewer than 7 of such 12 months, the manufacturer shall randomly select 3 or more lamps from each month of production, where the number of lamps selected for each month shall be distributed as evenly as practicable among the months of production to attain a minimum sample of 21 lamps. Any represented value of rated wattage of a basic model shall be based on the sample and shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample; Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.03, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

and

$$\bar{x}$$

is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with $n-1$ degrees of freedom (from Appendix A to this subpart).

(iv) For each basic model of general service incandescent lamp, for measurements of rated lifetime, a minimum sample of 20 lamps shall be tested. The manufacturer shall randomly select a minimum of two lamps from each month of production for a minimum of 7 out of the 12-month period. In the instance where production occurs during fewer than 7 of such 12 months, the manufacturer shall randomly select two or more lamps from each month of production, where the number of lamps selected for each month shall be distributed as evenly as practicable among the months of production to attain a minimum sample of 20 lamps. The lifetime shall be represented as the length of operating

time between first use and failure of 50 percent of the sample size, in accordance with test procedures described in section 4.2 of Appendix R to subpart B of part 430 of this chapter.

(b) * * *

(2) * * *

(iii) General service incandescent lamps: The testing laboratory's National Voluntary Laboratory Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production dates of the units tested, the rated wattage in watts (W), the rated lifetime (hours), and the Color Rendering Index (CRI).

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

4. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

5. Section 430.2 is amended by:

a. Removing in paragraph (2) of the definition of ''colored fluorescent lamp'' the words ''IESNA LM–9'' and adding in their place ''IES LM–9''; and

b. Adding in alphabetical order the definition of ''*Rated lifetime for general service incandescent lamps''.*

The addition reads as follows:

§ 430.2 Definitions.

* * * * *

Rated lifetime for general service incandescent lamps means the length of operating time of a sample of lamps (as defined in § 429.27(a)(2)(iv) of this chapter) between first use and failure of 50 percent of the sample size in accordance with test procedures described in IESNA LM–49, (incorporated by reference; see § 430.3), as determined in section 4.2 of Appendix R to subpart B of this part.

* * * * *

6. Section 430.3 is amended by:

a. Removing paragraph (c)(5) and redesignating paragraphs (c)(6) through (c)(17) as paragraphs (c)(5) through (c)(16);

b. Revising the newly redesignated paragraph (c)(5);

c. Revising paragraphs (k)(2) and (k)(5); and

d. Redesignating paragraph (k)(6) as paragraph (k)(7) and adding new paragraph (k)(6).

The revisions and additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(c) *ANSI.* * * *

(5) ANSI_ANSLG C78.81–2010, Revision of ANSI_IEC C78.81–2005 (''ANSI C78.81''), American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics, approved January 14, 2010, IBR approved for § 430.2, § 430.32, Appendix Q, Appendix Q1, and Appendix R to Subpart B.

* * * * *

(k) IESNA. * * *

(2) IES LM–9–09, Revision of IESNA LM–9–99 (''LM–9''), IES Approved Method for the Electrical and Photometric Measurement of Fluorescent Lamps, approved January 31, 2009; IBR approved for § 430.2 and Appendix R to Subpart B.

* * * * *

(5) IES LM–45–09, Revision of IESNA LM–45–00 (''LM–45''), IES Approved Method for the Electrical and Photometric Measurement of General Service Incandescent Filament Lamps, approved December 14, 2009; IBR approved for Appendix R to Subpart B.

(6) IESNA LM–49–01 (''LM–49''), IESNA Approved Method for Life Testing of Incandescent Filament Lamps, approved December 1, 2001, IBR approved for Appendix R to Subpart B.

* * * * *

7. Section 430.23 is amended by adding paragraph (r)(6) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(r) * * *

(6) The rated lifetime for general service incandescent lamps shall be equal to the length of operating time of a sample of lamps (as defined in § 429.27(a)(2)(iv) of this chapter) between first use and failure of 50 percent of the sample size in accordance with test procedures described in section 4.2 of Appendix R of this subpart.

* * * * *

8. Section 430.25 is revised to read as follows:

§ 430.25 Laboratory Accreditation Program.

Testing for fluorescent lamp ballasts performed in accordance with appendix Q1 to this subpart shall comply with this § 430.25. The testing for general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps shall be performed in accordance with Appendix R to this subpart. The testing for medium base compact fluorescent lamps shall be performed in accordance with Appendix W of this subpart. This testing shall be conducted by test laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) or by an accrediting organization recognized by NVLAP. NVLAP is a program of the National Institute of Standards and Technology, U.S. Department of Commerce. NVLAP standards for accreditation of laboratories that test for compliance with standards for fluorescent lamp ballast luminous efficiency (BLE), lamp efficacy, lamp lifetime, and fluorescent lamp CRI are set forth in 15 CFR part 285. A manufacturer's or importer's own laboratory, if accredited, may conduct the applicable testing. Testing for BLE may also be conducted by laboratories accredited by Underwriters Laboratories or Council of Canada. Testing for fluorescent lamp ballasts performed in accordance with Appendix Q to this subpart is not required to be conducted by test laboratories accredited by NVLAP or an accrediting organization recognized by NVLAP.

9. Appendix Q to subpart B of part 430 is amended by revising sections 1.5 through 1.10 and 2.1 to read as follows:

Appendix Q to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Fluorescent Lamp Ballasts

1. *Definitions*

* * * * *

1.5 *F40T12 lamp* means a nominal 40 watt tubular fluorescent lamp which is 48 inches in length and one and a half inches in diameter, and conforms to ANSI C78.81 (Data Sheet 7881–ANSI–1010–1) (incorporated by reference; see § 430.3).

1.6 *F96T12 lamp* means a nominal 75 watt tubular fluorescent lamp which is 96 inches in length and one and one-half inches in diameter, and conforms to ANSI C78.81 (Data Sheet 7881–ANSI–3007–1) (incorporated by reference; see § 430.3).

1.7 *F96T12HO lamp* means a nominal 110 watt tubular fluorescent lamp that is 96 inches in length and 1½ inches in diameter, and conforms to ANSI C78.81 (Data Sheet 7881–ANSI–1019–1) (incorporated by reference; see § 430.3).

1.8 *F34T12 lamp* (also known as a ''F40T12/ES lamp'') means a nominal 34 watt tubular fluorescent lamp that is 48 inches in length and 1½ inches in diameter, and conforms to ANSI C78.81 (Data Sheet 7881–ANSI–1006–1) (incorporated by reference; see § 430.3).

1.9 *F96T12/ES lamp* means a nominal 60 watt tubular fluorescent lamp that is 96 inches in length and 1½ inches in diameter, and conforms to ANSI C78.81 (Data Sheet 7881–ANSI–3006–1) (incorporated by reference; see § 430.3).

1.10 *F96T12HO/ES lamp* means a nominal 95 watt tubular fluorescent lamp that is 96 inches in length and 1½ inches in diameter, and conforms to ANSI C78.81 (Data

Sheet 7881–ANSI–1017–1) (incorporated by reference; see § 430.3).

* * * * *

2. *Test Conditions*

2.1 *Measurement of Active Mode Energy Consumption, BEF.* The test conditions for testing fluorescent lamp ballasts shall be done in accordance with ANSI C82.2 (incorporated by reference; see § 430.3). Any subsequent amendment to this standard by the standard setting organization will not affect the DOE test procedures unless and until amended by DOE. The test conditions for measuring active mode energy consumption are described in sections 4, 5, and 6 of ANSI C82.2. The test conditions described in this section (2.1) are applicable to section 3.1 of section 3, Test Method and Measurements. For section 2.1 and 3, ANSI C78.81 (incorporated by reference; see § 430.3), ANSI C82.1 (incorporated by reference; see § 430.3), ANSI C82.11 (incorporated by reference; see § 430.3), and ANSI C82.13 (incorporated by reference; see § 430.3) shall be used when applying ANSI C82.2 instead of the versions listed as normative references in ANSI C82.2.

* * * * *

10. Appendix Q1 to subpart B of part 430 is amended by revising sections 2.1, 2.3.1, and 2.4.1 to read as follows:

Appendix Q1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Fluorescent Lamp Ballasts

* * * * *

2. *Active Mode Procedure*

2.1 Where ANSI C82.2 (incorporated by reference; see § 430.3) references ANSI C82.1–1997, the operator shall use ANSI C82.1 (incorporated by reference; see § 430.3) for testing low-frequency ballasts and shall use ANSI C82.11 (incorporated by reference; see § 430.3) for testing high-frequency ballasts. In addition, ANSI C78.81 (incorporated by reference; see § 430.3), ANSI C82.1 (incorporated by reference; see § 430.3), ANSI C82.11 (incorporated by reference; see § 430.3), and ANSI C82.13 (incorporated by reference; see § 430.3) shall be used when applying ANSI C82.2 instead of the versions listed as normative references in ANSI C82.2.

* * * * *

2.3 *Test Setup*

2.3.1 The ballast shall be connected to a main power source and to the fluorescent lamp load according to the manufacturer's wiring instructions and ANSI C82.1 (incorporated by reference; see § 430.3) and ANSI C78.81 (incorporated by reference; see § 430.3).

* * * * *

2.4 *Test Conditions*

2.4.1 The test conditions for testing fluorescent lamp ballasts shall be done in accordance with ANSI C82.2 (incorporated by reference; see § 430.3). DOE further specifies that the following revisions of the normative references indicated in ANSI C82.2) should be used in place of the references directly specified in ANSI C82.2: ANSI C78.81 (incorporated by reference; see § 430.3), ANSI C82.1 (incorporated by reference; see § 430.3), ANSI C82.3 (incorporated by reference; see § 430.3), ANSI C82.11 (incorporated by reference; see § 430.3), and ANSI C82.13 (incorporated by reference; see § 430.3). All other normative references shall be as specified in ANSI C82.2.

* * * * *

11. Appendix R to subpart B of part 430 is amended by:

a. Revising the appendix heading;

b. Revising sections 2.1, 2.9, 3.1, 3.2, 4.1.1, 4.2.1, 4.2.2, and, 4.4.1;

c. Adding new section 4.2.3 and 4.2.3.1; and

d. Removing section 4.5.

The revisions and additions read as follows:

Appendix R to Subpart B of Part 430—Uniform Test Method for Measuring Average Lamp Efficacy (LE), Color Rendering Index (CRI), Correlated Color Temperature (CCT), and Lamp Lifetime of Electric Lamps

* * * * *

2. *Definitions*

2.1 To the extent that definitions in the referenced IESNA and CIE standards do not conflict with the DOE definitions, the definitions specified in section 3.0 of IES LM–9 (incorporated by reference; see § 430.3), section 3.0 of IESNA LM–20 (incorporated by reference; see § 430.3), section 3.0 and the Glossary of IES LM–45 (incorporated by reference; see § 430.3), section 2 of IESNA LM–58 (incorporated by reference; see § 430.3), and Appendix 1 of CIE 13.3 (incorporated by reference; see § 430.3) shall be included.

* * * * *

2.9 *Reference condition* means the test condition specified in IES LM–9 (incorporated by reference; see § 430.3) for general service fluorescent lamps, in IESNA LM–20 (incorporated by reference; see § 430.3) for incandescent reflector lamps, and in IES LM–45 for general service incandescent lamps (incorporated by reference; see § 430.3).

3. *Test Conditions*

3.1 *General Service Fluorescent Lamps:* For general service fluorescent lamps, the ambient conditions of the test and the electrical circuits, reference ballasts, stabilization requirements, instruments, detectors, and photometric test procedure and test report shall be as described in the relevant sections of IES LM–9 (incorporated by reference; see § 430.3).

3.2 *General Service Incandescent Lamps:* For general service incandescent lamps, the selection and seasoning (initial burn-in) of the test lamps, the equipment and instrumentation, and the test conditions shall be as described in IES LM–45 (incorporated by reference; see § 430.3).

* * * * *

4. *Test Methods and Measurements* * * *

4.1.1 The measurement procedure shall be as described in IES LM–9 (incorporated by reference; see § 430.3), except that lamps shall be operated at the appropriate voltage and current conditions as described in ANSI C78.375 (incorporated by reference; see § 430.3) and in ANSI C78.81 (incorporated by reference; see § 430.3) or ANSI C78.901 (incorporated by reference; see § 430.3), and lamps shall be operated using the appropriate reference ballast at input voltage specified by the reference circuit as described in ANSI C82.3 (incorporated by reference; see § 430.3). If, for a lamp, both low-frequency and high-frequency reference ballast settings are included in ANSI C78.81 or ANSI C78.901, the lamp shall be operated using the low-frequency reference ballast.

* * * * *

4.2 *General Service Incandescent Lamps*

4.2.1 The measurement procedure shall be as described in IES LM–45 (incorporated by reference; see § 430.3). Lamps shall be operated at the rated voltage as defined in § 430.2.

4.2.2 The test procedure shall conform to sections 6 and 7 of IES LM–45 (incorporated by reference; see § 430.3), and the lumen output of the lamp shall be determined in accordance with section 7 of IES LM–45. Lamp electrical power input in watts shall be measured and recorded. Lamp efficacy shall be determined by computing the ratio of the measured lamp lumen output and lamp electrical power input at equilibrium for the reference condition. The test report shall conform to section 8 of IES LM–45.

4.2.3 The measurement procedure for testing the lifetime of general service incandescent lamps shall be as described in IESNA LM–49 (incorporated by reference; see § 430.3). The lifetime measurement shall be taken by measuring the operating time of a lamp until failure, expressed in hours, not including any off time. The measured operating time shall be used to determine the rated lifetime, which is equal to the length of operating time between first use and failure of 50 percent of the sample size specified in § 429.27 of this chapter. The rated lifetime shall be used to determine whether the lamp meets minimum rated lifetime standards (see § 430.32(x)(1)(i)(A) and (B)).

4.2.3.1 Accelerated lifetime testing is not allowed. The second paragraph of section 6.1 of IESNA LM–49 (incorporated by reference; see § 430.3) is to be disregarded.

* * * * *

4.4 *Determination of Color Rendering Index and Correlated Color Temperature*

4.4.1 The CRI shall be determined in accordance with the method specified in CIE 13.3 (incorporated by reference; see § 430.3) for general service fluorescent lamps. The CCT shall be determined in accordance with the method specified in IES LM–9 (incorporated by reference; see § 430.3) and rounded to the nearest 10 kelvin for general service fluorescent lamps. The CCT shall be determined in accordance with the CIE 15 (incorporated by reference; see § 430.3) for incandescent lamps. The required spectroradiometric measurement and characterization shall be conducted in accordance with the methods set forth in

IESNA LM–58 (incorporated by reference; see § 430.3)

* * * * *

[FR Doc. 2011–23249 Filed 9–13–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–STD–0006]

RIN 1904–AC43

Energy Efficiency Program for Consumer Products: Public Meeting and Availability of the Framework Document for General Service Fluorescent Lamps and Incandescent Reflector Lamps

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

ACTION: Notice of public meeting and availability of the Framework Document.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is initiating the rulemaking and data collection process to consider establishing amended energy conservation standards for certain general service fluorescent lamps (GSFLs) and incandescent reflector lamps (IRLs). Accordingly, DOE will hold a public meeting to discuss and receive comments on its planned analytical approach and the issues it will address in this rulemaking proceeding. DOE welcomes written comments from the public on this rulemaking. To inform stakeholders and to facilitate this process, DOE has prepared a framework document which details the analytical approach and identifies several issues on which DOE is particularly interested in receiving comment. The framework document is posted at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

DATES: The Department will hold a public meeting on October 4, 2011, from 9 a.m. to 5 p.m. in Washington, DC for both this rulemaking on GSFL and IRL standards and the rulemaking on test procedures for GSFLs, general service incandescent lamps (GSILs), and IRLs. Any person requesting to speak at the public meeting should submit such request along with a signed original and an electronic copy of the statement to be given at the public meeting before 4 p.m., October 4, 2011. Written comments on the framework document are welcome, especially following the public meeting, and should be submitted by October 31, 2011.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed. Please also note that those wishing to bring laptops to the meeting will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes.

Stakeholders may submit comments, identified by docket number EERE–2011–BT–STD–0006 and/or Regulation Identifier Number (RIN) 1904–AC43, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: GSFL-IRL_2011-STD-0006@ee.doe.gov.* Include EERE–2011–BT–STD–0006 and/or RIN 1904–AC43 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for General Service Fluorescent Lamps and Incandescent Reflector Lamps, EERE–2011–BT–STD–0006 and/or RIN 1904–AC43, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN number for this rulemaking.

Docket: The docket for this rulemaking is available for review at *http://www.regulations.gov,* and will include **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. Not all documents listed in the index may be publicly available, however, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.* This web page contains a link to the docket for this notice on regulations.gov. The regulations.gov web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Dr. Tina Kaarsberg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–1393. E-mail: *Tina.Kaarsberg@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. Telephone (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: Title III of Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291 *et seq.*) sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) established the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which includes major household appliances.[1] Subsequent amendments expanded Title III of EPCA to include additional consumer products and certain commercial and industrial equipment, including certain fluorescent and incandescent lamps—the products that are the focus of this document. In particular, amendments to EPCA in the Energy Policy Act of 1992 (EPAct 1992), Public Law 102–486, established energy conservation standards for certain classes of GSFLs and IRLs, and required DOE to conduct two rulemaking cycles to determine whether these standards should be amended. (42 U.S.C. 6291(1), 6295(i)(1) and (3)–(4)) EPCA also authorized DOE to adopt standards for additional GSFLs if such standards were warranted. (42 U.S.C. 6295(i)(5))

DOE completed the first cycle of amendments by publishing a final rule in the **Federal Register** in July 2009 (hereafter referred to as the 2009 Lamps

[1] Part B was re-designated part A on codification in the U.S. Code for editorial reasons.

Rule). 74 FR 34080 (July 14, 2009). The 2009 Lamps rule addressed two statutory directives under 42 U.S.C. 6295(i) by amending existing GSFL and IRL energy conservation standards. (42 U.S.C. 6295(i)(3)) and adopting standards for additional GSFLs (42 U.S.C. 6295(i)(5)). This rule also amended the definition of ''colored fluorescent lamp'' and ''rated wattage'' and adopted test procedures applicable to the newly covered GSFL. Information regarding the 2009 Lamps Rule can be found on DOE's Web site at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

EPAct 1992 amendments to EPCA added as covered products certain IRLs with wattages of 40 watts (W) or higher, and established energy conservation standards for these IRLs. In defining the term ''incandescent reflector lamp,'' EPAct 1992 excluded lamps with elliptical reflector (ER) and bulged reflector (BR) bulb shapes, and with diameters of 2.75 inches or less. Therefore, such IRLs were neither included as covered products nor subject to EPCA's standards for IRLs.

Section 322(a)(1) of the Energy Independence and Security Act of 2007 (EISA 2007) subsequently amended EPCA to expand the Act's definition of ''incandescent reflector lamp'' to include lamps with a diameter between 2.25 and 2.75 inches, as well as lamps with ER, BR, bulged parabolic aluminized reflector (BPAR), or similar bulb shapes. (42 U.S.C. 6291(30)(C)(ii) and (F)) Section 322(b) of EISA 2007, in amending EPCA to set forth revised standards for IRLs in new section 325(i)(1)(C), exempted from these standards the following categories of IRLs: (1) Lamps rated 50 watts or less that are ER30, BR30, BR40, or ER40; (2) lamps rated 65 watts that are BR30, BR40, or ER40 lamps; and (3) R20 incandescent reflector lamps rated 45 watts or less. (42 U.S.C. 6295(i)(C)) DOE refers to these three categories of lamps collectively as certain reflector (R), ER and BR IRLs.

DOE has concluded, for the reasons that follow, that it has the authority under EPCA to adopt standards for these R, ER, and BR IRLs, and that these lamps are covered by the directive in 42 U.S.C. 6295(i)(3) to amend EPCA's standards for IRLs. First, by amending the definition of ''incandescent reflector lamp'' (42 U.S.C. 6291(30)(C)(ii) and (F)), EISA 2007 effectively brought these R, ER and BR IRLs into the Federal energy conservation standards program as covered products, thereby subjecting them to DOE's regulatory authority. Second, although 42 U.S.C. 6295(i)(1)(C) exempts these R, ER and BR IRLs from the standards specified in 42 U.S.C. 6295(i)(1)(B), EPCA directs that DOE amend the standards laid out in 42 U.S.C 6295(i)(1), which includes subparagraph (C). As a result, the statutory text exempted these bulbs only from the standards specified in 42 U.S.C. 6295(i)(1), not from future regulation. Consequently, DOE is considering energy conservation standards for these R, ER and BR IRLs. DOE initiated a new rulemaking for these products by publishing a framework document and publishing a notice announcing its availability. 75 FR 23191 (May 3, 2010). DOE held a public meeting on May 26, 2010 to seek input from interested parties on its methodologies, assumptions, and data sources.

To initiate the second rulemaking cycle to consider amended energy conservation standards for GSFLs and IRLs (other than the certain R, ER and BR IRLs discussed in the preceding paragraphs), DOE has prepared a framework document to explain the issues, analyses, and processes it anticipates using for the development of potential energy efficiency standards for certain GSFLs and IRLs. The framework document is available at *http://www.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

In a separate rulemaking proceeding, DOE is also considering amendments to the test procedures used for determining the performance of GSFLs and IRLs. DOEs proposed amendments to the test procedures for GSFLs and IRLs are published elsewhere in today's **Federal Register**.

As noted in **DATES**, DOE will hold a public meeting on October 4, 2011 in Washington, DC to discuss the analyses presented and issues identified in the framework document prepared for the development of potential GSFL and IRL energy efficiency standards. At the public meeting, the Department will make a number of presentations, invite discussion on the rulemaking process as it applies to the covered products, and solicit comments, data, and information from participants and other interested parties. The Department encourages those who wish to participate in the public meeting to obtain the framework document and to be prepared to discuss its contents.

Public meeting participants need not limit their comments to the issues identified in the framework document. The Department is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for these products or the applicable test procedures. Furthermore, the Department welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by the date specified in the **DATES** section, comments and information on matters addressed in the framework document and on other matters relevant to consideration of standards for GSFL and IRL.

The public meeting will be conducted in an informal, facilitated, conference style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the proceedings of the public meeting, after which a transcript will be made available on DOE's Web site at *http://www.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

After the public meeting and the close of the comment period on the framework document, DOE will begin collecting data, conducting the analyses as discussed in the framework document and at the public meeting, and reviewing the comments received.

DOE considers public participation to be a very important part of the process for setting energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Beginning with the framework document, and during each subsequent public meeting and comment period, interactions with and between members of the public provide a balanced discussion of the issues to assist DOE in the standards rulemaking process. Accordingly, anyone who would like to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding this rulemaking on GSFL and IRL, should contact Ms. Brenda Edwards at (202) 586–2945, or via e-mail at: *Brenda.Edwards@ee.doe.gov*.

Issued in Washington, DC, on September 6, 2011.

Kathleen B. Hogan,

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

[FR Doc. 2011–23245 Filed 9–13–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0918; Directorate Identifier 2011–NM–090–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes; Model A340–200 and –300 Series Airplanes; Model A340–500 and –600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a pre-flight test before delivery of an aeroplane from the Airbus production line, a fault message was triggered on FDU1 [fire detection unit].

Investigations by the supplier on the faulty FDU have identified a soldering quality issue on one of the internal cards. This quality issue resulted from a specific repair process that was applied to some FDU * * * during manufacturing.

The FDU monitors the engine, Auxiliary Power Unit (APU) and Main Landing Gear (MLG) bay fire detection systems.

This condition, if not corrected, may adversely affect the fire detection system performance in case of a fire in the area that is monitored by the faulty FDU, potentially resulting in an unsafe condition.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 31, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0918; Directorate Identifier 2011–NM–090–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0073, dated April 20, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During a pre-flight test before delivery of an aeroplane from the Airbus production line, a fault message was triggered on FDU1.

Investigations by the supplier on the faulty FDU have identified a soldering quality issue on one of the internal cards. This quality issue resulted from a specific repair process that was applied to some FDU Part Number (P/N) 3711–00 during manufacturing.

The FDU monitors the engine, Auxiliary Power Unit (APU) and Main Landing Gear (MLG) bay fire detection systems.

This condition, if not corrected, may adversely affect the fire detection system performance in case of a fire in the area that is monitored by the faulty FDU, potentially resulting in an unsafe condition.

For the reasons described above, this [EASA] AD requires the identification and replacement of the affected FDU.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the all operators telexes (AOT) listed in the following table.

TABLE—ALL OPERATORS TELEXES

Model	Airbus all operators telex	Date
Model A330	AOT A330–26A3052	April 19, 2011.
Model A340–200, –300	AOT A340–200/300–26A4044	April 19, 2011.
Model A340–500, –600	AOT A340–500/600–26A5024	April 19, 2011.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 58 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Replacement parts may be provided free of charge by the manufacturer. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,930, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2011–0918; Directorate Identifier 2011–NM–090–AD.

Comments Due Date

(a) We must receive comments by October 31, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, and –243F airplanes; Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; Model A340–311, –312, and –313 airplanes; Model A340–541 airplanes; and Model A340–642 airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 26: Fire Protection.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During a pre-flight test before delivery of an aeroplane from the Airbus production line, a fault message was triggered on FDU1 [fire detection unit].

Investigations by the supplier on the faulty FDU have identified a soldering quality issue on one of the internal cards. This quality issue resulted from a specific repair process that was applied to some FDU * * * during manufacturing.

The FDU monitors the engine, Auxiliary Power Unit (APU) and Main Landing Gear (MLG) bay fire detection systems.

This condition, if not corrected, may adversely affect the fire detection system performance in case of a fire in the area that is monitored by the faulty FDU, potentially resulting in an unsafe condition.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 1,000 flight hours after the effective date of this AD: Do an inspection to identify the Fire Detection Unit (FDU) part number (P/N) and serial number (S/N) of each engine, auxiliary power unit (APU), and MLG bay (for Model A340–500 and –600 series airplanes only), as applicable, in accordance with the instructions of Airbus All Operators Telex (AOT) A330–26A3052, dated April 19, 2011 (for Model A330–200 and –300 series airplanes); Airbus AOT A340–200/300–26A4044, dated April 19, 2011 (for Model A340–200 and –300 series airplanes); or Airbus AOT A340–500/600–26A5024, dated April 19, 2011 (for Model A340–500 and –600 series airplanes). A review of maintenance records is acceptable in lieu of this inspection if the P/N and S/N of the installed FDU can be conclusively determined from that review.

(h) If during the inspection required by paragraph (g) of this AD, P/N 3711–00 FDU

is found installed and the S/N of the FDU is listed in table 1 of this AD: Before further flight, replace the FDU with a serviceable FDU, in accordance with the instructions of Airbus AOT A330–26A3052, dated April 19, 2011 (for Model A330–200 and –300 series airplanes); Airbus AOT A340–200/300–26A4044, dated April 19, 2011 (for Model A340–200 and –300 series airplanes); or Airbus AOT A340–500/600–26A5024, dated April 19, 2011 (for Model A340–500 and –600 series airplanes).

TABLE 1—AFFECTED P/N 3711–00 FIRE DETECTION UNITS

Serial Nos.
ZL0683.
ZL0718.
ZL0721 through ZL0725 inclusive.
ZL0727.
ZL0729 through ZL0731 inclusive.
ZL0736.
ZL0738.
ZL0740.
ZL0742.
ZL0743.
ZL0745.

TABLE 1—AFFECTED P/N 3711–00 FIRE DETECTION UNITS—Continued

Serial Nos.
ZL0747.
ZL0770.
ZL0772.
ZL0775.
ZL0788.
ZL0804.

Note 1: Some of the affected P/N 3711–00 FDUs have been installed in production on certain airplanes, as indicated in table 2 of this AD.

TABLE 2—FDU INSTALLED IN PRODUCTION

Model A330–200 and –300 airplanes manufacturer serial numbers	Position	S/N
1177	ENG2 FDU (1WD2)	ZL0683
1191	ENG2 FDU (1WD2)	ZL0723
1192	ENG1 FDU (1WD1)	ZL0721
	ENG2 FDU (1WD2)	ZL0722
1193	APU FDU (13WG)	ZL0718
1195	ENG1 FDU (1WD1)	ZL0740
1196	ENG1 FDU (1WD1)	ZL0742
	ENG2 FDU (1WD2)	ZL0736
	APU FDU (13WG)	ZL0743
1198	ENG2 FDU (1WD2)	ZL0738
1199	APU FDU (13WG)	ZL0731
1200	ENG1 FDU (1WD1)	ZL0747
1206	ENG2 FDU (1WD2)	ZL0770

Parts Installation

(i) As of the effective date of this AD, no person may install on any airplane, any P/N 3711–00 FDU with a serial number listed in table 1 of this AD, unless the FDU has been reworked and re-identified by L'Hotellier as specified in the instructions in Airbus AOT A330–26A3052, dated April 19, 2011 (for Model A330–200 and –300 series airplanes); Airbus AOT A340–200/300–26A4044, dated April 19, 2011 (for Model A340–200 and –300 series airplanes); or Airbus AOT A340–500/600–26A5024, dated April 19, 2011 (for Model A340–500 and –600 series airplanes).

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

No differences.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to *Attn:* Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2011–0073, dated April 20, 2011; Airbus AOT A330–26A3052, dated April 19, 2011; Airbus AOT A340–200/300–26A4044, dated April 19, 2011; and Airbus AOT A340–500/600–26A5024, dated April 19, 2011; for related information.

Issued in Renton, Washington, on September 7, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–23470 Filed 9–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 352

[Docket No. FDA–1978–N–0018] (formerly Docket No. 1978N–0038)

RIN 0910–ZA40

Sunscreen Drug Products for Over-the-Counter Human Use; Request for Data and Information Regarding Dosage Forms; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; request for data and information; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for the advance notice of proposed rulemaking (ANPRM) that published on June 17, 2011. The ANPRM is requesting data and information on certain dosage forms of over-the-counter (OTC) sunscreen drug products marketed without approved applications. The comment period for that ANPRM will end on September 15, 2011. This document extends the comment period to October 17, 2011.

DATES: Submit either electronic or written data and information by October 17, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FDA–1978–N–0018 (formerly Docket No. 1978N–0038) and/or RIN number 0910–ZA40, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, Docket No. FDA–1978–N–0018, and RIN 0910–ZA40 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided if not marked as confidential. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*, insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Reynold Tan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5411, Silver Spring, MD 20993–0002, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 17, 2011 (76 FR 35669) (the June 17, 2011, ANPRM), FDA published an ANPRM that requested data and information on OTC sunscreen products marketed without approved applications that are formulated in certain dosage forms. FDA requested these data to help establish OTC monograph conditions, including dosage form specifications, for OTC sunscreen drug products. Among the data requested is data necessary to resolve specific questions about the effectiveness and safety of OTC sunscreens in spray dosage forms.

II. Extension of the Comment Period

In response to the June 17, 2011, ANPRM, three submissions (Refs. 1, 2, and 3) requested an extension of the comment period, which will end on September 15, 2011. Two of the submissions requested that FDA extend the comment period by 30 days so that the comment period totals 4 months (Refs. 1 and 2). The other submission requested that FDA extend the comment period by 90 to 180 days so that the comment period totals 6 to 9 months (Ref. 3). The submissions cited the need for additional time to evaluate their available data and to organize and submit the data and information that best addresses FDA's request while simultaneously implementing the new requirements for their sunscreen products imposed by the Labeling and Effectiveness Testing final rule that published in the **Federal Register** of June 17, 2011 (76 FR 35620).

FDA is extending the comment period to end on October 17, 2011. A total comment period of 4 months is sufficient for the public to submit comments to the ANPRM.

III. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments, data, and information by October 17, 2011. It is only necessary to submit one set of comments, data, and information. It is no longer necessary to two copies of mailed comments, data, and information. Identify submissions with the docket number found in brackets in the heading of this document, and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) under Docket No. FDA–1978–N–0018 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. FDA–1978–N–0018–DRAFT–5225.

2. Comment No. FDA–1978–N–0018–DRAFT–5227.

3. Comment No. FDA–1978–N–0018–DRAFT–5228.

Dated: September 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–23479 Filed 9–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

30 CFR Part 250

[Docket ID BOEM–2011–0003]

RIN 1010–AD73

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Revisions to Safety and Environmental Management Systems

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to amend BOEMRE regulations to require operators to develop and implement additional provisions in their Safety and Environmental Management Systems (SEMS) programs for oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). These revisions pertain to developing and implementing stop work authority and ultimate work authority, requiring employee participation in the development and implementation of SEMS programs, and establishing requirements for reporting unsafe working conditions. In addition, this proposed rule requires independent third parties to conduct audits of operators' SEMS programs and establishes further requirements relating to conducting job safety analysis (JSA) for activities identified in an operator's SEMS program. We believe that these new requirements will further reduce the likelihood of accidents, injuries, and spills in connection with OCS activities that are regulated under BOEMRE jurisdiction, by requiring OCS operators to specifically address issues associated with human behavior as it applies to their SEMS program.

DATES: Submit comments by November 14, 2011. BOEMRE may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this

proposed rule by October 14, 2011. This does not affect the deadline for the public to comment to BOEMRE on the proposed regulations.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD73 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2011–0003 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BOEMRE will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; *Attention:* Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ''Revisions to Safety and Environmental Management Systems (SEMS), 1010–AD73'' in your comments and include your name and return address.
- Send comments on the information collection in this rule to: Interior Desk Officer 1010–AD73, Office of Management and Budget; 202–395–5806 (fax); *e-mail: oira_docket@omb.eop.gov.* Please also send a copy to BOEMRE.

FOR FURTHER INFORMATION CONTACT: David Nedorostek, Safety and Enforcement Branch, BOEMRE, (703) 787–1029.

SUPPLEMENTARY INFORMATION: On October 15, 2010, BOEMRE published a final rule that established a new subpart S in part 250, containing SEMS requirements for all OCS operators (75 FR 63610). This proposed rule would add to and amend those requirements. This proposed rule would apply to all OCS oil and gas and sulphur operations and facilities under BOEMRE jurisdiction including drilling, production, construction, well workover, well completion, well servicing, and Department of the Interior (DOI) pipeline activities. Nothing in this proposed rule would affect the Coast Guard's authority with respect to safety regulations and authorities, and jurisdiction over vessels and offshore facilities. Thus, because several other agencies have jurisdiction over certain aspects of OCS activities and some of these agencies require the use of safety management systems, the requirements related to SEMS programs under this subpart do not affect operators' obligations to comply with other regulatory requirements outside of BOEMRE's jurisdiction. For example, if the operator's activities fall within the regulatory purview of another agency (including, *e.g.,* United States Coast Guard, Department of Homeland Security), the operator is also required to follow that agency's regulations. Operations and activities that are regulated under BOEMREs jurisdiction and that should be identified/discussed in an operators SEMS plan cover industrial activities. These cover such activities as, mineral exploration, development, pipeline transportation, storage, production, drilling, completion and workover. A system/sub-system breakdown of what is regulated under BOEMREs jurisdiction can be found in Annex 1 of MMS/USCG MOA: OCS–01 and in the MMS/USCG MOA: OCS–04 (these documents have been placed in the public docket). Operators should refer to these documents when developing, implementing and auditing their SEMS plan.

The importance of this proposed rule is highlighted by the Deepwater Horizon event on April 20, 2010. The blowout of the BP Macondo well, and the resulting explosion on the Deepwater Horizon drilling rig, resulted in the deaths of 11 workers, the loss of the Deepwater Horizon, and an oil spill of national significance. Although the causes of the event continue to be under investigation, the event further illustrates the importance of ensuring safe operations on the OCS. BOEMRE therefore intends to continue to evaluate findings from ongoing investigations and reviews into the Deepwater Horizon event, as well as other issues related to managing human factors to promote safety and environmental protection for offshore oil, gas, and sulphur development.

This proposed rule will further enhancements to operators' SEMS programs. SEMS programs, properly implemented by the operator, are designed to improve the safety performance of offshore operations. Because SEMS programs focus on the overall safety performance of offshore operations activities that are regulated under BOEMRE jurisdiction, as opposed to compliance with specific prescriptive requirements governing those operations, the success of a SEMS program ultimately depends on how effectively the operator engrains the principles underlying SEMS into the safety culture of their operations. BOEMRE remains actively engaged with industry regarding the substance and implementation of SEMS programs.

BOEMRE will continue to analyze information that becomes available, and to implement standards necessary to make offshore oil and gas activity safer and with appropriate protections for workers and the environment. BOEMRE may consider further safety and environmental protection requirements as well as other measures in future rulemakings. This may include consideration of further interagency coordination, further analysis of performance-based and prescriptive requirements, and maintaining a flexible approach to adopting requirements that can keep up with evolving technologies so as to promote systematic safety and other relevant matters. BOEMRE anticipates, in the near future, issuing an advanced notice of proposed rulemaking (ANPRM) that will solicit public comment regarding potential new safety measures for offshore operations. The ANPRM will include discussion of a range of new measures that are intended to encourage public comment on potential new prescriptive requirements, as well as performance-based standards, designed to further enhance the safety of offshore energy operations and promote appropriate safety culture in those operations.

It is the intention of BOEMRE to share information with the public on aggregated results from SEMS audits. BOEMRE will develop metrics that demonstrate industry's degree of compliance with this new regulatory requirement.

Summary of the Proposed Rule

BOEMRE proposes to expand, revise, and add several new requirements necessary for more thorough SEMS programs, and to facilitate BOEMRE oversight. BOEMRE believes the following requirements are necessary provisions to ensure a complete safety management program on OCS facilities that are regulated under BOEMRE jurisdiction. These six additional requirements provide several key ways for offshore employees to help ensure safe operation of activities that are regulated under BOEMRE jurisdiction on the OCS. The addition of a mandatory independent third party auditor brings necessary objectivity to identifying good practices and any deficiencies that may exist in an operator's SEMS program.

(1) Procedures to authorize any and all employees on the facility to implement a Stop Work Authority (SWA) program when witnessing an activity that is regulated under BOEMRE jurisdiction that creates a threat of danger to an individual, property, and/or the environment;

(2) Clearly defined requirements establishing who has the ultimate authority on the facility for operational

safety and decision making at any given time;

(3) A plan of action that shows how operator employees are involved in the implementation of the American Petroleum Institute's Recommended Practice for Development of a Safety Environmental Management Program for Offshore Operations and Facilities (API RP 75), as incorporated by reference in the subpart S regulatory requirements in the October 15, 2010, final rule;

(4) Guidelines for reporting unsafe work conditions related to an operators SEMS program, that provide all employees the right to report a possible safety or environmental violation(s) and to request a BOEMRE inspection of the facility if they believe there is a serious threat of danger or their employer is not following BOEMRE regulations;

(5) Revisions that require operators with SEMS programs to engage independent third party auditors to conduct all audits of operators' SEMS programs and that the independent third party auditors must meet the criteria listed in Section 250.1926 of this proposed rule;

(6) Additional requirements for conducting a JSA.

Section-by-Section Discussion of the Proposed Requirements

What must I include in my SEMS program? (§ 250.1902)

BOEMRE proposes additional requirements to subpart S in this rulemaking. The proposed rule would revise this section to include references to the following proposed new sections and requirements: stop work authority (§ 250.1930), ultimate work authority (§ 250.1931), employee participation (§ 250.1932), and guidelines for reporting unsafe work conditions (§ 250.1933). These new requirements would need to be included in the operator's SEMS program.

Definitions (§ 250.1903)

BOEMRE proposes to add definitions for *management* and *mobile offshore drilling unit (MODU)* in subpart S. *Management* would mean a team of individuals who have the day-to-day responsibilities for overseeing operations conducted on a facility or providing instruction to operational personnel, including but not limited to employees and contractors working on a facility or in the company's onshore offices; *Mobile offshore drilling unit or MODU would mean a vessel capable of engaging in drilling, well workover, well completion or well servicing operations for exploring or exploiting subsea oil, gas or other mineral resources.*

What criteria for hazards analyses must my SEMS program meet? (§ 250.1911)

BOEMRE proposes additional requirements for conducting a JSA. The proposed requirements would improve the effectiveness of the JSA through better identification of risks and hazards. The operator would be required to ensure a JSA is prepared, conducted, and approved for OCS activities that are regulated under BOEMRE jurisdiction and identified or discussed in the SEMS program. A JSA is a technique used to identify risks to personnel associated with the activity and the appropriate mitigation to reduce these risks. The analysis must include all personnel involved with or affected by the activity being conducted. The JSA must identify, analyze, and record: the steps involved in performing a specific job; the existing or potential safety and health hazards associated with each step; and the recommended action(s) or procedure(s) that will eliminate or reduce these hazards and the risk of a workplace injury or illness. If a particular activity is conducted on a recurring basis, and if the parameters of these recurring activities do not change, then the person in charge of the activity could decide that a JSA for each employee engaged in that activity is not required. The parameters the person in charge would be required to consider in making this determination include, but are not limited to, changes in personnel, procedures, equipment, and/or environmental conditions associated with the activity.

The immediate supervisor of the personnel conducting the work would be required to prepare the JSA, sign the JSA, and ensure that all personnel participating in the job sign the JSA as well. The person onsite designated by the operator as the person in charge of the facility would have to approve and sign the JSA and document the results of the JSA in writing.

The operator must conduct training for all personnel on how to recognize and identify hazards as part of the SEMS program. The operator must provide the training required under this rule to employees within 30 days of employment, and not less than once every 12 months thereafter.

What criteria for training must be in my SEMS program? (§ 250.1915)

BOEMRE proposes additional requirements for training so that all personnel performing activities on the OCS that are regulated under BOEMRE jurisdiction are trained to work safely and are aware of potential environmental considerations offshore, in accordance with their duties and responsibilities. Training would have to address the methods of recognizing and identifying hazards and how to develop and implement JSAs (§ 250.1911), operating procedures (§ 250.1913), safe work practices (§ 250.1914), emergency response and control measures (§ 250.1918), stop work authority (§ 250.1930), ultimate work authority (§ 250.1931), employee participation program (§ 250.1932), and the reporting of unsafe work conditions (§ 250.1933). Proposed § 250.1915 (c) and (d) would ensure that changes in standards would be communicated to operator personnel and that training for contractor personnel would be verified.

What are the auditing requirements for my SEMS program? (§ 250.1920)

BOEMRE proposes to revise this section by removing the option for the operator to use designated and qualified operator personnel to perform an audit of the SEMS program. Use of an independent third party will provide for increased objectivity in regards to improving personnel safety and achieving environmental protection as compared to utilizing a designated and qualified person of the operator. Therefore, BOEMRE would require that audits of operators SEMS programs be conducted by independent third parties. Independent third parties would be required to meet the qualifications under § 250.1926.

How will BOEMRE determine if my SEMS program is effective? (§ 250.1924)

BOEMRE proposes to require the operator to conduct audits using only an independent third party. The proposed rule would revise this section to be consistent with that requirement by removing the option to allow the operator to use designated and qualified operator personnel to perform an audit of the SEMS program. The audit is the initial step to determine if an operator's SEMS program is effective. It will take time to ascertain the ultimate effectiveness of this regulatory requirement. Provisions for submittal of accident and incident information in the initial SEMS rule published in October 2010, will provide metrics that will help demonstrate the effectiveness of this requirement. BOEMRE is also researching additional ways to determine the effectiveness of an operator's SEMS program on an individual company basis.

What qualifications must an independent third party auditor meet? (§ 250.1926)

BOEMRE proposes to revise this section by removing the option for the operator to use designated and qualified operator personnel to perform an audit of the SEMS program. This section also would include new qualifications that the independent third party auditor must meet.

The operator would be required to nominate an independent third party to audit its SEMS program. The independent third party must be capable of performing all tasks associated with an audit. The operator would be required to notify BOEMRE in writing of its nomination and to submit a request to BOEMRE for approval of the proposed third party auditor at least 30 days prior to the next audit. The request must state the name and address of the nominated individual or organization. The request would have to include the following items: Qualifications of the nominated individual or organization relating to education and previous experience with SEMS, or similar management related programs; previous experience with BOEMRE regulatory requirements and procedures; and the educational background and previous experience that qualifies the proposed auditor to understand and evaluate how the operator's offshore activities, raw materials, production methods and equipment, products, byproducts, and business management systems may impact health and safety performance in the workplace. A request would also have to include a signed statement that the independent third party is not owned or controlled by, or otherwise affiliated with, the operator. An operator would also need to have procedures to avoid conflicts of interest related to the development of the operator's SEMS program and the independent third party auditor. The proposed rule would provide that if a third party auditor was involved in developing and/or maintaining the SEMS program, then that person, organization, and/or its subsidiaries could not audit the SEMS program.

Under the proposed rule, after evaluating the third party's qualifications, BOEMRE could accept or not accept the operator's independent third party nomination. If BOEMRE does not accept the nomination of an independent third party, then the operator must submit a new nomination before the audit may go forward.

The audit report, once completed, must be submitted to BOEMRE and the operator. BOEMRE will notify the operator of whether or not the audit report is sufficient and acceptable. Under the proposal, the operator would be responsible for the costs of the audit.

What are my recordkeeping and documentation requirements? (§ 250.1928)

BOEMRE proposes adding additional requirements to subpart S in this rulemaking. In the proposed rule, this section would be revised to include new recordkeeping and documentation requirements. For stop work authority, training and review records would have to be kept at the facility for 30 days, retained for two years, and made available to BOEMRE upon request. The operator would also have to document that all personnel participated in the development and implementation of the SEMS program. Such records would have to be retained for two years and made available to BOEMRE upon request.

What must be included in my SEMS program for ''Stop Work Authority'' (SWA)? (§ 250.1930)

BOEMRE proposes to add a new section requiring operators to create and implement an SWA program. This program would ensure that all employees and personnel, including contractors performing activities on the OCS that are regulated under BOEMRE jurisdiction, are given the responsibility and authority to stop work at the facility when such employees or personnel witness an activity that is regulated under BOEMRE jurisdiction that creates an imminent risk or danger to the health or safety of an individual or of the public or to the environment. The SWA would include authority to stop the specific task(s) or activity that poses an imminent risk or danger. Imminent risk or danger would mean any condition, activity, or practice in the workplace that could reasonably be expected to cause: (1) Death or serious physical harm immediately or before the risk or danger can be eliminated through enforcement procedures; or (2) significant, imminent environmental harm to land, air, aquatic, marine or subsea environments or resources. The rule would provide further that individuals who receive notification to stop work must comply with the direction immediately. In supporting the safe execution of work and to promote a culture of safety at work, all personnel should have the responsibility and authority to stop work or decline to perform an assigned task when an immediate risk or danger exists, without fear of reprisal. Persons exercising the SWA should have discussions with co-workers, supervisors, and/or safety representatives to attempt to resolve any safety issues that may be causing the imminent danger or risk. The proposed rule would provide that when a stop work order under an SWA program use is issued, the person in charge of the activity that is subject to the order is responsible for ensuring the work is stopped in an orderly and safe manner. The rule would provide further that work may be resumed upon a determination by the person on the facility with ultimate work authority that the imminent danger or risk does not exist or no longer exists. The decision to resume activities would have to be documented as soon as practicable.

What must be included in my SEMS program for ''Ultimate Work Authority'' (UWA)? (§ 250.1931)

BOEMRE is also proposing a requirement for operators to specify who has the Ultimate Work Authority (UWA) on fixed or floating facilities (*i.e.,* floating production systems; floating production, storage and offloading facilities; tension-leg platforms; and spars) and on MODUs performing activities under BOEMRE's jurisdiction. The person with the UWA would be the person on the fixed or floating facilities or MODU with the final responsibility for making decisions. Under the proposed rule, the operator's SEMS program must identify all persons that could have UWA and those persons must be designated as such by the operator. Only a single person would have UWA at any given time, so operators must take into consideration all applicable Coast Guard regulations that deal with designating a ''person in charge'' (in accordance with USCG regulations) of a MODU or OCS floating facility.

The SEMS program would have to define clearly who is in charge at all times, and would ensure that all personnel clearly know who is in charge, including when that responsibility shifts to a different person. The person with UWA must be known by name and be readily identifiable, and accessible by every person on the MODU or fixed and floating facility. This could be done, for instance, by posting a notice including contact information in a public and easily accessible location.

Proposed § 250.1931(c) would make it clear that the operator has the responsibility for ensuring its SEMS program is implemented on fixed and floating facilities, and on MODUs conducting activities under BOEMRE's

jurisdiction. The person with the UWA has a key role in assuring that the operator's SEMS program is implemented in a manner that addresses personnel safety and protection of the environment.

Proposed § 250.1931(d) would require the SEMS program to provide that if an emergency occurs that creates an imminent risk or danger to the health or safety of an individual or the public or to the environment (as specified in proposed § 250.1930(a)), the person with the UWA is authorized to pursue any action necessary in that person's judgment to mitigate and abate the conditions, activities or practices causing the emergency. This grant of authority is needed to ensure that necessary actions will be taken to deal with a serious emergency.

What are my employee participation program requirements? (§ 250.1932)

BOEMRE proposes to add a new section to the rule that details operators' requirements relating to an employee participation program. Under the proposed rule, an operator's management would be required to consult with its employees that perform activities on the OCS that are regulated under BOEMRE jurisdiction on the development and implementation of the SEMS program. Management would also have to develop a written plan of action regarding how appropriate employees, in both the operator's offices and working on offshore facilities, will participate in the SEMS program development and implementation. The operator would have to provide each employee and contractor employee access to the SEMS program and to all other information required by API RP 75, as incorporated, and the employee participation program. Management must provide BOEMRE a copy of the employee participation program upon request and make it available during an audit.

What criteria must be included for reporting unsafe work conditions? (§ 250.1933)

BOEMRE is proposing guidelines for the reporting of unsafe work conditions, which would permit operator personnel and contractors on any facility engaged in OCS activities under BOEMRE jurisdiction to report to BOEMRE violations of any BOEMRE order or regulation or any other provision of Federal law relating to offshore safety or other hazardous or unsafe working conditions. These procedures must also include the existing Coast Guard unsafe working conditions reporting requirements found in 33 CFR 142.7 and 46 CFR 109.419. The proposed rule would specify that a report should contain sufficient credible information to establish a reasonable basis for BOEMRE to determine whether a violation or other hazardous or unsafe working condition exists. Under the proposed rule, an employee or contractor would not be required to know whether a specific BOEMRE order or regulation has been violated in order to report potentially unsafe conditions. The proposal would provide that the identity of any person making a report under paragraph (c) of this section will not be made available by BOEMRE, without the permission of the reporting person, to anyone other than the employees of BOEMRE who have a need for the record in the performance of their official duties. Under the proposal, after reviewing the report and conducting any necessary investigation, BOEMRE would notify the operator of any deficiency or hazard and initiate enforcement measures as the circumstances warrant.

The report could either be made in writing to the address provided in the regulation or verbally by calling the BOEMRE hotline (1–877–440–0173).

As relates to the reporting of unsafe work conditions, the operator would be responsible for:

(1) Posting a notice explaining personnel rights and remedies in a visible location at the place of employment where employees frequent;

(2) Providing training to personnel about their rights and responsibilities within 30 days of employment, and at least once every 12 months thereafter; and

(3) Providing personnel with a card containing a toll-free telephone number to contact BOEMRE or file a complaint.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866.

(1) This proposed rule would not have an annual effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This proposed rule might raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

BOEMRE has prepared a Regulatory Impact Analysis (RIA) for this rulemaking. The full analysis can be found on Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2011–0003 then click search. Follow the instructions to view the RIA and submit public comments for this rulemaking.

BOEMRE estimates the average annual cost of complying with this rulemaking is $26.9 million, spread across all OCS oil and gas operators with active operations. The benefits of the proposed SEMS provisions in this rulemaking would come from enhanced safety for offshore workers and greater protection of the marine environment. These benefits would be realized through additional employee participation in safety procedures, training programs, notification obligations, as well as strengthened safety and SEMS auditing procedures.

We estimated the costs of this proposed regulation by totaling the costs from both the Paperwork Reduction Act (PRA) burden estimates and the estimated required training costs added through this rulemaking. BOEMRE estimates that the compliance costs for this regulation are $15.2 million for recordkeeping, administration, and related costs and $11.7 million for training costs. This yields a total estimated annual compliance cost for this proposed rule of $26.9 million.

Because OCS operators have until November 15, 2011 to implement to all thirteen elements of the SEMS program per 30 CFR 250.1900(a), the compliance cost estimate for this regulation also considers burden hours for legacy implementation costs covered by the PRA. These legacy PRA costs are estimated to be $40.0 million. If these legacy costs are included the total estimated compliance cost for this proposed rule is $66.9 million ($15.2 + $11.7 + $40.0 = $66.9 million).

The protection of human life and the environment are the top priorities and objectives of this rule. While it is difficult to quantify the benefits of the lives saved and risks avoided due to this proposed regulation, implementation of a comprehensive SEMS program with these newly proposed requirements is intended to further the goal of avoiding accidents that may result in injuries,

fatalities, and serious environmental damage.

The compliance cost for managing a comprehensive SEMS program is very minor compared to the costs associated with major accidents. For example, in 1987, prior to industry's development of a safety management template for offshore operations, the Mississippi Canyon 311, A (Bourbon), platform in the Gulf of Mexico was tilted to one side by an extensive underground blowout. The cost associated with this incident alone was $274,000,000. In 1989, a fire associated with a pipeline repair killed 7 people and destroyed a major production facility. The 2010 Macondo blowout event killed 11 people, destroyed the drilling rig and caused billions of dollars in damage. A SEMS program is not a guarantee of avoiding or preventing all accidents, but BOEMRE's intent in requiring a comprehensive SEMS program, which includes all 13 elements in API RP75 and these newly proposed provisions in this rulemaking, is to reduce the likelihood of these types of accidents and incidents and raise the safety awareness of all personnel.

Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared for this rulemaking and is available as part of the RIA. The IRFA can be found on Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2011–0003, then click search. Follow the instructions to view the RIA and IRFA and submit public comments for this rulemaking.

The changes proposed in the rule would affect lessees and operators of leases and pipeline right-of-way holders in the OCS. This group could include about 130 active Federal oil and gas lessees. Small lessees that operate under this rule fall under the Small Business Administration's North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 65 percent of the affected companies are considered small. This proposed rule, therefore, would affect a substantial number of small entities.

Small entities are represented in all activity levels of OCS operations (high, moderate, and low based on the number of offshore complexes the entity operates). Small companies would bear approximately 40 percent of the costs of this proposed rulemaking. This is approximately $10.7 million of the $26.9 million estimated compliance cost for this proposed rule. If the legacy PRA burden implementation costs are added to the new costs in this proposed rulemaking, small companies' burden is about $27.5 million of the estimated $66.9 million.

While 40 percent is greater than small companies' share of OCS leases, small companies hold 45 percent of leases in the shallow water depths where most production facilities are located (98 percent of active platforms are in shallow water).

The operating risk for small companies to incur safety or environmental accidents is not necessarily lower than it is for larger-sized companies. Offshore operations are highly technical and can be hazardous. Adverse consequences in the event of incidents, are the same regardless of the operator's size. We have evaluated a number of alternatives to accommodate small entities and facilitate compliance with the intent of this rulemaking, but were unable to identify provisions that would achieve the same safety objectives.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BOEMRE, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements would apply to all entities operating on the OCS.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no substantial effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA) of 1995

This rulemaking proposes to add new requirements to current regulations under 30 CFR 250, Subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations. Therefore, an information collection request is being submitted to OMB for review and approval under 44 U.S.C. 3501 *et seq.* The information collection for the current regulations is approved under

OMB Control Number 1010–0186 (expiration date 10/31/2013, 465,099 burden hours, $12,933,000 non-hour cost burdens).

As part of our continuing effort to reduce paperwork and respondent burdens, BOEMRE invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the information collection aspects of this proposed rule, please send your comments directly to OMB and send a copy of your comments to the Regulations and Standards Branch (see the **ADDRESSES** section of this notice). Please reference; *30 CFR Part 250, Subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas and Sulphur Operations,* 1010–0186 in your comments. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau's Information Collection Clearance Officer at (703) 787–1025.

The PRA provides that 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. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by October 14, 2011. This does not affect the deadline for the public to comment to BOEMRE on the proposed regulations.

The title of the collection of information for the rule is 30 CFR part 250, subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas and Sulphur Operations. Respondents are Federal OCS lessees, operators, and independent third-parties. Responses to this collection are mandatory. The frequency of response varies, but is primarily on occasion. The information collection (IC) does not include questions of a sensitive nature. BOEMRE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 522) and its implementing regulations (43 CFR part 2); 30 CFR 250.197, Data and information to be made available to the public or for limited inspection; and 30 CFR part 252, OCS Oil and Gas Information Program. BOEMRE will use the information to evaluate the effect of industry's continued improvement of OCS safety and environmental management and its compliance with the regulations. It should be noted that while this rulemaking adds additional burden hours to industry, the vast majority of these hours stem from expanding their current SEMS program, along with documenting and recordkeeping relative to these expanded requirements, to address issues raised in testimony, hearings, and reports being released about the Deepwater Horizon explosion and resulting oil spill.

This proposed rulemaking would add 177,077 burden hours through *expansion* of some existing requirements and through new regulatory requirements to the 465,099 hours already approved for this subpart, for a total of 642,176 hour burdens. The burden table portrays only the *Expanded* and/or New requirements/ burden hours that would be added to those already approved by OMB.

BURDEN TABLE

[Italics show expansion of existing requirements; bold indicates new requirements]

Citation 30 CFR 250 subpart S	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Additional annual burden hours
1900–1933 *Expanded* ..	High Activity Operator: * * * As part of your SEMS, you must also develop and implement written *procedures for SWA and include item as standard info pertaining to SWA in all JSA drills; plan of action* re *employee participation and implementation; UWA info/designated person; procedures for employees to report unsafe work conditions* * * *.	2,848	13 operators	37,024.
1900–1933 *Expanded* ..	Moderate Activity Operator: * * * As part of your SEMS, you must also develop and implement written *procedures for SWA and include item as standard info pertaining to SWA in all JSA drills; plan of action* re *employee participation and implementation; UWA info/designated person; procedures for employees to report unsafe work conditions* * * *.	2,188	41 operators	89,708.
1900–1933 *Expanded* ..	Low Activity Operator: * * * As part of your SEMS, you must also develop and implement written *procedures for SWA and include item as standard info pertaining to SWA in all JSA drills; plan of action re employee participation and implementation; UWA info/designated person; procedures for employees to report unsafe work conditions* * * *.	100	76 operators	7,600.
1911(b) *Expanded*	Direct supervisor *and onsite supervisory* approval to conduct a JSA. *Employee participation and signing.*	1 min	130 operators × 365 days × 6 = 284,700*.	4,745.

BURDEN TABLE—Continued

[Italics show expansion of existing requirements; bold indicates new requirements]

Citation 30 CFR 250 subpart S	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Additional annual burden hours
1920(c); 1925(a), (c); *1926*(e).	Submit to BOEMRE after completed audit, report of findings and conclusions, including deficiencies and required supporting information/documentation.	Burden already covered under 1010–0186.		
1925(a); *1926(f)*	Pay for all costs associated with BOEMRE directed audit approximately 20 percent per operator per category: 3 required audits for high operator ($20,000 per audit × 3 audits = $60,000); 8 required audits for moderate operator ($12,000 per audit × 8 audits = $96,000; and 15 required audits for low operator ($9,000 per audit per 15 audits = $135,000) = 26 required audits per year at a total yearly combined cost of $291,000.	Burden already covered under 1010–0186.		
1926(a), (d) **New**	Notify BOEMRE in writing of nomination of independent third party auditor, submit request 30 days prior to audit re approval with relevant information; include signed statement re owned/controlled by operator and submit new nomination if needed.	3	130 operators once every 3 years = 43.	129.
1928*Expanded*	* * * (4) *SWA documentation must be kept onsite for 30 days; retain records for 2 years. (5) Document and retain employee participation records for 2 years.* (6) All documentation included in this requirement must be made available to BOEMRE upon request.	*2 hrs/mo × 12 mos/yr = 24 hrs.* *30 mins*	*1,007 manned facilities* 2,447 *unmanned facilities.*	24,168. 1,224 *(rounded)*
1930(c) **New**	Document decision to resume SWA activities	8	Once every 2 weeks = 26.	208.
1932(d), (e) **New**	Upon request, provide BOEMRE copy of employee participation program; make program available during an audit.	1	43 audits	43.
1933(c) **NEW**	Employee reports unsafe practices and/or health violation.	10 mins ..... 30 mins	1 oral ..... 1 written	1 hour (rounded).
1933(f) **New**	Post notice where employees can view employees' rights for reporting unsafe practices.	30 mins	3,454 facilities	1,727.
1933(h) **New**	Provide to all employees unsafe activities card with relevant information.	10 mins	63,000 full/part time employees.	10,500.
Total Hour Burden to be added to 30 CFR 250, subpart S				177,077 hours.

*We calculated operators conducting six JSAs a day (3 JSAs for each 12-hour shift). Some contractors may perform none for a particular day, whereas others may conduct more than six per day. This estimate is an average.

BOEMRE specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for BOEMRE to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information. We have not identified any additional costs in this proposed rulemaking, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) Total capital and startup cost component, and (b) Annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased:

(1) Before October 1, 1995;

(2) To comply with requirements not associated with the information collection;

(3) For reasons other than to provide information or keep records for the Government; or

(4) As part of customary and usual business or private practices.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEMRE has analyzed this proposed rule under the criteria of the National Environmental Policy Act and 516 Departmental Manual 15. This proposed rule meets the criteria set forth in 43 CFR 46.210 for a Departmental ''Categorical Exclusion'' in that this rule is '' * * * of an administrative, financial, legal, technical, or procedural nature. * * *'' Further, BOEMRE has analyzed this rule to determine if it meets any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 43 CFR 46.215.

Each section and subsection has also been reviewed to ensure that no potentially relevant extraordinary circumstances apply to the proposed action that would warrant the preparation of an environmental assessment or environmental impact statement. All extraordinary circumstances were considered in accordance with 43 CFR 46.215, but only the following ones are potentially applicable:

a. Have significant and adverse impacts on public health or safety.

b. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

c. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

The first extraordinary circumstance does not apply since rule promulgation would not contribute to any significant and adverse impacts on public health and safety. The SEMS program is likely to improve OCS safety, given the available incident data trends and associated 10 years of analysis. The second extraordinary circumstance does not apply since the promulgation of the rule or the eventual implementation of SEMS by operators does not set precedent for future actions or decisions by BOEMRE. The last extraordinary circumstance does not apply since there is no direct relationship between this rulemaking and other actions that could together contribute to cumulatively significant effects.

Most subsections of the rule address strictly administrative, technical, and/or procedural matters. Specific examples include definitions of terminology, scope and timing of documentation, recordkeeping, and transfer of information, and general descriptions of what is to be included in written procedures. The rule does not create the potential for environmental effects as a result of new technologies, technology configurations, or technological procedures as such measures are not part of the rule. For aspects of the rule dealing with mechanical integrity and inspections, the requirements are procedural and technical as the rule covers the content of the written procedures. While the rule identifies the requirement, it allows the operator to choose the means to achieve compliance as long as the means are consistent with the SEMS requirements.

Other subsections require activities in addition to administrative tasks, advance planning and procedural documentation, such as training and emergency response drills, and require corrective procedural actions that address human errors identified in investigations. These requirements are also considered procedural in nature since the subsections describe general and ordered steps that operators must undertake to have and maintain a compliant SEMS program. Subsections that require training of personnel on conducting drills are procedural in that they target the cognitive skills and knowledge of personnel (*e.g.,* § 250.1915(b)) and/or clarify the purpose and/or scope of training (*e.g.,* § 250.1918(c)). For example, in § 250.1918, BOEMRE requires training and drills for personnel to exercise elements in the Emergency Action Plan that focus on response, control, and evacuation procedures and reporting. The principal purpose of this is to ensure retention of and refine the skills, knowledge, and abilities of personnel. BOEMRE concluded that this rule does not meet any of the criteria for extraordinary circumstances as set forth in 43 CFR 46.215.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 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 the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Public Availability of Comments

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

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental protection, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: September 9, 2011.

Ned Farquhar,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for 30 CFR part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

2. Amend § 250.1902 by adding paragraphs (a)(14), (a)(15), (a)(16), and (a)(17) to read as follows:

§ 250.1902 What must I include in my SEMS program?

* * * * *

(a) * * *

(14) Stop Work Authority (see § 250.1930).

(15) Ultimate Work Authority (see § 250.1931).

(16) Employee Participation (see § 250.1932).

(17) Reporting Unsafe Work Conditions (see § 250.1933).

* * * * *

3. Amend § 250.1903 by adding definitions of ''Management'' and ''Mobile offshore drilling unit or MODU'' in alphabetical order to read as follows:

§ 250.1903 Definitions.

* * * * *

Management means a team of individuals who have the day-to-day responsibilities for overseeing operations conducted on a facility or providing instruction to operational personnel, including but not limited to employees and contractors working on a facility or in the company's onshore offices.

Mobile offshore drilling unit or MODU means a vessel capable of engaging in drilling well workover, well completion and well servicing operations for exploring or exploiting subsea oil, gas or other mineral resources.

* * * * *

4. In § 250.1911, revise paragraph (b) and add new paragraphs (c) and (d) to read as follows:

§ 250.1911 What criteria for Hazards Analyses must my SEMS program meet?

* * * * *

(b) *Job Safety Analysis (JSA).* You must ensure a JSA is prepared, conducted, and approved for OCS activities that are regulated under BOEMRE jurisdiction that are identified or discussed in your SEMS program. The JSA is a technique used to identify risks to personnel associated with the activity and the appropriate mitigation to reduce these risks. The JSA must include all personnel involved with or affected by the activity being conducted. You must ensure that:

(1) Your JSA identifies, analyzes, and records:

(i) The steps involved in performing a specific job;

(ii) The existing or potential safety and health hazards associated with each step; and

(iii) The recommended action(s)/procedure(s) that will eliminate or reduce these hazards and the risk of a workplace injury or illness.

(2) The immediate supervisor of the crew conducting the work must conduct the JSA, sign the JSA, and ensure that all personnel participating in the job sign as well.

(3) The person onsite designated by the operator as the person in charge of the facility must approve and sign the JSA.

(4) A single JSA remains sufficient provided that the relevant activity is recurring, without major changes to personnel, procedures, equipment, environmental conditions, or other major issues associated with that activity.

(c) As part of your SEMS program, all employees and contractors who perform activities on the OCS that are regulated under BOEMRE jurisdiction must be trained on the methods of recognizing and identifying hazards, and the development and implementation of your JSA. You must provide training to these personnel within 30 days of employment, and not less than once every 12 months thereafter.

(d) You must verify that contractors have received training and that contractor employees have understood the training.

5. Amend § 250.1915 by revising the introductory text and paragraphs (c) and (d) to read as follows:

§ 250.1915 What criteria for training must be in my SEMS program?

Your SEMS program must establish and implement a training program so that all personnel who perform activities on the OCS that are regulated under BOEMRE jurisdiction are trained to work safely and are aware of potential environmental impacts offshore, in accordance with their duties and responsibilities. Training must address the methods of recognizing and identifying hazards and how to develop and implement JSAs (§ 250.1911), operating procedures (§ 250.1913), safe work practices (§ 250.1914), emergency response and control measures (§ 250.1918), stop work authority (§ 250.1930), ultimate work authority (§ 250.1931), employee participation program (§ 250.1932), and the reporting of unsafe work conditions (§ 250.1933).

* * * * *

(c) Communication requirements to ensure that whenever a change is made to the methods of recognizing and identifying hazards and how to develop and implement JSAs (§ 250.1911), operating procedures (§ 250.1913), safe work practices (§ 250.1914), emergency response and control measures (§ 250.1918), stop work authority (§ 250.1930), ultimate work authority (§ 250.1931), employee participation program (§ 250.1932), or the reporting of unsafe work conditions (§ 250.1933), personnel will be trained in or otherwise given notice of the change before they are expected to operate the facility.

(d) Identify how you will verify that the contractors are trained in the work practices necessary to perform their jobs in a safe and environmentally responsible manner, including training on the methods of recognizing and identifying hazards, and the implementation of JSAs (§ 250.1911), operating procedures (§ 250.1913), safe work practices (§ 250.1914), emergency response and control measures (§ 250.1918), stop work authority (§ 250.1930), ultimate work authority (§ 250.1931), employee participation program (§ 250.1932), and the reporting unsafe of work conditions (§ 250.1933).

6. Amend § 250.1920 by:

a. Revising the first sentence of paragraph (a), and

b. Revising paragraphs (b)(6) and (c) to read as follows:

§ 250.1920 What are the auditing requirements for my SEMS program?

(a) You must have your SEMS program audited by an independent third party according to the requirements of this subpart and API RP 75, Section 12 (incorporated by reference as specified in § 250.198) within two years of the initial implementation of the SEMS program and at least once every three years thereafter. * * *

(b) * * *

(6) Section 12.6 Audit Team. The audit that you submit to BOEMRE must be conducted by an independent third party. The independent third party must meet the requirements in § 250.1926.

(c) You must require the independent third party auditor to submit an audit report of the findings and conclusions of the audit to BOEMRE within 30 days of the audit completion date. The report must outline the results of the audit, including any deficiencies identified through the audit.

* * * * *

7. Amend § 250.1924 by:

a. Revising the second sentence of paragraph (a), and

b. Revising paragraph (b)(2) to read as follows:

§ 250.1924 How will BOEMRE determine if my SEMS program is effective?

(a) * * * BOEMRE or its authorized representative may evaluate your SEMS program, including documentation of contractors, independent third parties, and auditors, and audit reports, to assess your SEMS program. * * *

(b) * * *

(2) The qualifications of the independent third party;

* * * * *

8. Revise § 250.1926 to read as follows:

§ 250.1926 What qualifications must an independent third party auditor meet?

(a) You must nominate an independent third party to audit your SEMS program. The independent third party auditor must be capable of performing all tasks associated with a SEMS program audit. You must notify BOEMRE in writing of your nomination and must submit a request to BOEMRE for approval at least 30 days prior to your next audit. The request must state the name and address of the nominated individual or organization and the request must include the following listed items:

(1) Qualifications of the individual or organization related to:

(i) Education and previous experience with SEMS, or similar management related programs;

(ii) Previous experience with BOEMRE regulatory requirements and procedures;

(iii) Educational background and previous experience relevant to understanding and evaluating how the operator's offshore activities, raw materials, production methods and equipment, products, byproducts, and business management systems may impact health and safety performance in the workplace; and

(2) A statement signed by the operator's management that the independent third party auditor is not owned or controlled by, or otherwise affiliated with, the operator's company:

(b) You must have procedures to avoid conflicts of interest related to the development of your SEMS program and the independent third party auditor. If an independent third party developed and/or maintains your SEMS program, then that person and/or its subsidiaries cannot audit your SEMS program.

(c) After evaluating the qualifications of the nominated independent third party auditor, BOEMRE may or may not approve your nomination.

(d) If BOEMRE does not approve your nomination of an independent third party auditor, then you must submit a new nomination.

(e) The independent third party auditor's audit report must meet the criteria in § 250.1920(c) and the independent third party auditor must submit the audit report to BOEMRE and the operator. BOEMRE will notify the operator if BOEMRE accepts or rejects the audit report.

(f) You are responsible for all of the costs associated with the audit.

9. Amend § 250.1928 by:

a. Redesignating paragraph (f) as paragraph (h), and

b. Adding new paragraphs (f) and (g) to read as follows:

§ 250.1928 What are my recordkeeping and documentation requirements?

* * * * *

(f) For Stop Work Authority (SWA), you must document all training and reviews and must ensure that these records are kept on the facility for 30 days. You must retain these records for two years and make them available to BOEMRE upon request.

(g) For Employee Participation, you must document that your employees participated in the development and implementation of the SEMS program, retain these records for two years and make them available to BOEMRE upon request.

* * * * *

10. Add new § 250.1930 to read as follows:

§ 250.1930 What must be included in my SEMS program for ''Stop Work Authority'' (SWA)?

(a) Your SEMS program must include SWA procedures that authorize and make responsible any and all employees and other personnel (including contractors) who perform activities on the OCS that are regulated under BOEMRE jurisdiction and witness an activity that creates an imminent risk or danger to the health or safety of an individual, the public, or to the environment to immediately stop the work that is creating the risk or danger. In this section, imminent risk or danger means any conditions activities or practices in the workplace that could reasonably be expected to cause:

(1) Death or serious physical harm immediately or before the risk or danger can be eliminated through enforcement procedures; or

(2) Significant, imminent harm to land, air, aquatic, marine or subsea environments or resources.

(b) The person in charge of a specific activity is responsible for ensuring the work is stopped in an orderly and safe manner. Individuals who receive a notification to stop work must comply with that direction immediately.

(c) Work may be resumed upon a determination by the person on the facility with ultimate work authority that the imminent risk or danger that led to the stoppage does not exist or no longer exists. The decision to resume activities must be documented in writing as soon as practicable.

(d) You must include SWA authority and expectations as a standard line item in all JSA drills.

(e) You must conduct training on your SWA Policy and Program as part of all new employee and contractor orientations that perform activities on the OCS that are regulated under BOEMRE jurisdiction. Additionally, a review of the SWA Policy must be completed as part of all safety meetings.

11. Add new § 250.1931 to read as follows:

§ 250.1931 What must be included in my SEMS program for ''Ultimate Work Authority'' (UWA)?

(a) For fixed and floating facilities (*e.g.,* floating production systems; floating production, storage and offloading facilities; tension-leg platforms; and spars) and for MODUs performing activities under BOEMRE's jurisdiction, your SEMS program must identify the person with the ultimate work authority (UWA), *i.e.* the person located on the facility or MODU with the final responsibility for making decisions relating to activity and operations on the facility. This person must be designated by the operator taking into account all applicable Coast Guard regulations that deal with designating a ''person in charge'' (in accordance with USCG definition) of a MODU or OCS facility found in 33 CFR 146.5 and 46 CFR 109.109. Your SEMS program must clearly define who is in charge at all times.

(b) You must ensure that all personnel clearly know who has UWA and who is in charge of a specific operation or activity that are regulated under BOEMRE jurisdiction, including when that responsibility shifts to a different person.

(c) The operator must ensure that all the provisions of its SEMS program are implemented on fixed and floating facilities, and on MODUs conducting activities under BOEMRE's jurisdiction.

(d) The SEMS program must provide that if an emergency occurs that creates an imminent risk or danger to the health or safety of an individual, the public, or to the environment (as specified in § 250.1930(a)), the person with the UWA is authorized to pursue the most effective action necessary in that

person's judgment for mitigating and abating the conditions or practices causing the emergency.

12. Add new § 250.1932 to read as follows:

§ 250.1932 What are my employee participation program requirements?

(a) Management must consult with their employees on the development and implementation of the company's SEMS program.

(b) Management must develop a written plan of action regarding how appropriate employees, in both the operator's offices and working on offshore facilities, will participate in their SEMS program development and implementation.

(c) You must provide each employee of the operator and each contractor access to your SEMS program.

(d) Management must provide BOEMRE a copy of their employee participation program upon request.

(e) Management must assure that their employee participation program is made available during an audit.

13. Add new § 250.1933 to read as follows:

§ 250.1933 What criteria must be included for reporting unsafe work conditions?

(a) Your SEMS program must include procedures that address the reporting of unsafe work conditions. These procedures must include the existing Coast Guard unsafe working conditions reporting requirements found in 33 CFR 142.7 and 46 CFR 109.419.

(b) The unsafe work conditions section of your SEMS program must ensure all personnel including the operator's employees contractor employees, as well as, contractors providing domestic services to the lessee or other contractors, including domestic services include janitorial work, food and beverage service, laundry service, housekeeping, and similar activities, who perform activities on the OCS that are under BOEMRE jurisdiction are covered by the program. An employee or contractor is not required to know whether a specific BOEMRE order or regulation has been violated in order to report unsafe conditions.

(c) Any person may report to BOEMRE a possible violation of any BOEMRE order, standard, or regulation in this subchapter, or other Federal law relating to offshore safety, or any other hazardous or unsafe working condition on any facility engaged in OCS activities under BOEMRE jurisdiction. The report should contain sufficient credible information to establish a reasonable basis for BOEMRE to investigate whether a violation or other hazardous or unsafe working condition exists.

(1) To report hazardous or unsafe working conditions or a violation, you can contact BOEMRE by:

(2) [By Phone]: 1–877–440–0173 or 202–208–5646 (BOEMRE Safety Hotline).

(3) [Write To]: U.S. Department of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement, Investigations and Review Unit, 1849 C Street, NW., MS–5560, Washington, DC 20240, Attention: IRU Hotline Operations. You should include the following items in your report:

(i) Your name, address, and telephone number (Anonymous reports can be processed in regards to unsafe working activities. If you would like to make an anonymous safety-only report, please use the BOEMRE Safety Hotline listed above.);

(ii) The specific order or regulation of BOEMRE, or the specific provision of Federal law in question (if known);

(iii) Any other facts, data, and applicable information.

(d) After reviewing the report and conducting any necessary investigation, BOEMRE will notify the operator of any deficiency or hazard and initiate enforcement measures as the circumstances warrant.

(e) The identity of any person making a report under paragraph (c) of this section shall not be made available, without the permission of the reporting person, to anyone other than the employees of BOEMRE who have a need for the record in the performance of their official duties.

(f) All operators must post a notice explaining personnel rights and remedies under this section. The notice must be posted at the place of employment in a visible location frequently visited by personnel.

(g) Each operator must provide training to employees on unsafe work conditions policy within 30 days of employment, and not less than once every 12 months thereafter.

(h) Each employee must be provided a card that contains the BOEMRE telephone number (1–877–440–0173) which employees can call to get information or report unsafe activities under this section.

[FR Doc. 2011–23537 Filed 9–13–11; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0638; FRL–9463–9]

Approval and Promulgation of Air Quality Implementation Plans; California; Determinations of Failure To Attain the One-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that three areas in California, previously designated nonattainment for the one-hour ozone national ambient air quality standard (NAAQS), did not attain that standard by their applicable attainment dates: the Los Angeles-South Coast Air Basin Area (''South Coast''), the San Joaquin Valley Area (''San Joaquin Valley''), and the Southeast Desert Modified Air Quality Maintenance Area (''Southeast Desert''). These proposed determinations are based on three years of quality-assured and certified ambient air quality monitoring data for the period preceding the applicable attainment deadline.

DATES: Written comments must be received on or before October 14, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R09–OAR–2011–0638, by one of the following methods:

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

2. *E-mail:* Doris Lo at *lo.doris@epa.gov.*

3. *Fax:* Doris Lo, Air Planning Office (AIR–2), at fax number 415–947–3579.

4. *Mail:* Doris Lo, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105.

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FOR FURTHER INFORMATION CONTACT: Doris Lo, (415) 972–3959, or by e-mail at *lo.doris@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What actions is EPA taking?

EPA is proposing to determine, under the Clean Air Act (CAA or ''Act''), that three areas previously designated nonattainment for the one-hour ozone NAAQS—the South Coast, the San Joaquin Valley, and the Southeast Desert—failed to attain the NAAQS for one-hour ozone by their applicable one-hour NAAQS attainment dates.

II. Background

Regulatory Context

The Act requires us to establish NAAQS for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the Act). In 1979, we promulgated the revised one-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979).[1]

An area is considered to have attained the one-hour ozone standard if there are no violations of the standard, as determined in accordance with the regulation codified at 40 CFR 50.9, based on three consecutive calendar years of complete, quality-assured and certified monitoring data. A violation occurs when the ambient ozone air quality monitoring data show greater than one (1.0) ''expected number'' of exceedances per year at any site in the area, when averaged over three consecutive calendar years.[2] An exceedance occurs when the maximum hourly ozone concentration during any day exceeds 0.124 ppm. For more information, please see ''National 1-hour primary and secondary ambient air quality standards for ozone'' (40 CFR 50.9) and ''Interpretation of the 1–Hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR part 50, appendix H).

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991). The Act further classified these areas, based on the severity of their nonattainment problem, as Marginal, Moderate, Serious, Severe, or Extreme.

The control requirements and date by which attainment of the one-hour ozone standard was to be achieved varied with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while Severe and Extreme areas were subject to more stringent planning requirements and were provided more time to attain the standard. Two measures that are triggered if a Severe or Extreme area fails to attain the standard by the applicable attainment date are contingency measures [section 172(c)(9)] and a major stationary source fee provision [sections 182(d)(3) and 185)] (''major source fee program'' or ''section 185 fee program'').

Designations and Classifications

On November 6, 1991, EPA designated the South Coast[3] as ''Extreme'' nonattainment for the one-hour ozone standard, with an attainment date no later than November 15, 2010 (56 FR 56694). In its November 6, 1991 final rule, EPA designated the San Joaquin Valley[4] as ''Serious'' nonattainment for the one-hour ozone standard, but later reclassified the valley as ''Severe'' (66 FR 56476, November 8, 2001), and then as ''Extreme'' (69 FR 20550, April 16, 2004) for the one-hour ozone standard, with the same attainment date (November 15, 2010) as the South Coast. In its 1991 final rule, EPA designated the Southeast Desert[5] as ''Severe-17'' nonattainment for the one-hour ozone standard, with an attainment date no later than November 15, 2007.

[1] For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.12 ppm becomes 120 ppb (or between 120 to 124 ppb, when rounding is considered).

[2] An ''expected number'' of exceedances is a statistical term that refers to an arithmetic average. An ''expected number'' of exceedances may be equivalent to the number of observed exceedances plus an increment that accounts for incomplete sampling. *See,* 40 CFR part 50, appendix H. Because, in this context, the term ''exceedances'' refers to days (during which the daily maximum hourly ozone concentration exceeded 0.124 ppm), the maximum possible number of exceedances in a given year is 365 (or 366 in a leap year).

[3] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County (see 40 CFR 81.305).

[4] San Joaquin Valley includes all of Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare counties, as well as the western half of Kern County (see 40 CFR 81.305).

[5] The Southeast Desert covers the Victor Valley/Barstow region in San Bernardino County, the Coachella Valley region in Riverside County, and the Antelope Valley portion of Los Angeles County (see 40 CFR 81.305).

Outside of Indian country,[6] the South Coast lies within the jurisdiction of the South Coast Air Quality Management District (SCAQMD). Similarly, with the exception of Indian country, San Joaquin Valley lies within the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). Likewise, excluding Indian country, the Los Angeles portion of the Southeast Desert lies within the Antelope Valley Air Quality Management District (AVAQMD), the San Bernardino County portion of the Southeast Desert lies within the Mojave Desert Air Quality Management District (MDAQMD), and the Riverside County portion of the Southeast Desert lies within the SCAQMD.

Under California law, each air district is responsible for adopting and implementing stationary source rules, such as the fee program rules required under CAA section 185, while the California Air Resources Board (CARB) adopts and implements consumer products and mobile source rules. The district and state rules are submitted to EPA by CARB.

Transition From One-Hour Ozone Standard to Eight-Hour Ozone Standard

In 1997, EPA promulgated a new, more protective standard for ozone based on an eight-hour average concentration (the 1997 eight-hour ozone standard). In 2004, EPA published the 1997 eight-hour ozone designations and classifications and a rule governing certain facets of implementation of the eight-hour ozone standard (Phase 1 Rule) (69 FR 23858 and 69 FR 23951, respectively, April 30, 2004).

Although EPA revoked the one-hour ozone standard (effective June 15, 2005), to comply with anti-backsliding requirements of the Act, eight-hour ozone nonattainment areas remain subject to certain requirements based on their one-hour ozone classification. Initially, in our rules to address the transition from the one-hour to the eight-hour ozone standard, EPA did not include contingency measures or the section 185 fee program among the measures retained as one-hour ozone anti-backsliding requirements.[7] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have excluded these requirements from its anti-backsliding requirements. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) reh'g denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review).

Thus, the Court vacated the provisions that excluded these requirements. As a result, States must continue to meet the obligations for one-hour ozone NAAQS contingency measures and, for Severe and Extreme areas, major source fee programs. EPA has issued a proposed rule that would remove the vacated provisions of 40 CFR 51.905(e), and that addresses contingency measures for failure to attain or make reasonable further progress toward attainment of the one-hour standard. See 74 FR 2936, January 16, 2009 (proposed rule); 74 FR 7027, February 12, 2009 (notice of public hearing and extension of comment period).

Rationale for Today's Proposed Action

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD* v. *EPA,* 47 F.3d 882, at 903. In keeping with this responsibility with respect to one-hour anti-backsliding contingency measures and section 185 fee programs for these three California areas, EPA proposes to determine that each area failed to attain the one-hour ozone standard by its applicable attainment date.

III. What is EPA's analysis?

A determination of whether an area's air quality meets the one-hour ozone standard is generally based upon three years of complete,[8] quality-assured and certified air quality monitoring data gathered at established State and Local Air Monitoring Stations (''SLAMS'') in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the AQS database. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of an area. See 40 CFR 50.9; 40 CFR part 50, appendix H; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix H.

Under EPA regulations at 40 CFR 50.9, the one-hour ozone standard is attained at a monitoring site when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 micrograms per cubic meter) is equal to or less than 1, as determined by 40 CFR part 50, appendix H.[9]

EPA proposes to determine that the South Coast, the San Joaquin Valley, and the Southeast Desert failed to attain the one-hour ozone standard by their applicable attainment dates; that is, the number of expected exceedances at sites in each of the three nonattainment areas was greater than one per year in the period prior to the applicable attainment date. These proposed determinations are based on three years of quality-assured and certified ambient air quality monitoring data in AQS for the 2008–2010 monitoring period for the South Coast and the San Joaquin Valley, and quality-assured and certified data in AQS for 2005–2007 for the Southeast Desert.

A. South Coast One-Hour Ozone Nonattainment Area

In the South Coast, the South Coast Air Quality Management District (SCAQMD) is responsible for assuring that the area meets air quality monitoring requirements. SCAQMD Annual Network Plans describe the air monitoring network and discuss its status, as required under 40 CFR 58.10.

Since 2007, EPA has regularly reviewed these annual plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to ozone, EPA has found that the area's network plans meet the applicable requirements under 40 CFR part 58.[10] Furthermore, we

[6] ''Indian country'' as defined at 18 U.S.C. 1151 refers to: ''(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.''

[7] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

[8] Generally, a ''complete'' data set for determining attainment of the ozone is one that includes three years of data with an average percent of days with valid monitoring data greater than 90% with no single year less than 75%. See 40 CFR part 50, appendix I. There are less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the standard.

[9] The average number of expected exceedances is determined by averaging the expected exceedances of the one-hour ozone standard over a consecutive three calendar year period. *See* 40 CFR part 50 appendix H.

[10] See, *e.g.,* letter from Matthew Lakin, Manager, Air Quality Analysis Office, Air Division, EPA

concluded in our Technical System Audit of the SCAQMD network conducted during April 2010, that the ambient air monitoring network operated by SCAQMD network currently meets or exceeds the requirements for the minimum number of SLAMS monitoring sites for all criteria pollutants, and that all of the required ozone monitoring sites are properly located with respect to monitoring objectives, spatial scales and other site criteria, as required by 40 CFR part 58, appendix D.[11] Also, SCAQMD annually certifies that the data it submits to AQS are quality-assured.[12]

There were 29 ozone monitoring sites located throughout the South Coast in calendar years 2008 through 2010: 13 within Los Angeles County, four within Orange County, seven within Riverside County, and five within San Bernardino County.[13] All SCAQMD sites monitor ozone concentrations on a continuous basis using ultraviolet absorption monitors.[14] SCAQMD administered 28 of the 29 sites, and one was administered by the Morongo Band of Mission Indians. Table 1 summarizes the ozone monitoring data from the various monitoring sites in the South Coast Air Basin by showing the expected exceedances per year and as an average over the 2008–2010 period. The data summarized in Table 1 are considered complete for the purposes of determining if the standard is met.[15]

TABLE 1—ONE-HOUR OZONE DATA FOR THE SOUTH COAST ONE-HOUR OZONE NONATTAINMENT AREA

General location	Site (AQS ID)	Expected exceedances by year			Expected exceedances 3-yr average
		2008	2009	2010	2008–2010
LOS ANGELES COUNTY:					
East San Gabriel Valley	Azusa (06–037–0002)	7.0	4.0	0.0	3.6
East San Fernando Valley	Burbank (06–037–1002)	1.0	1.0	0.0	0.7
South Central Los Angeles County [a]	Lynwood/Compton (06–037–1301/06–037–1302)	0.0	0.0	0.0	0.0
East San Gabriel Valley	Glendora (06–037–0016)	12.0	7.4	0.0	6.5
Southwest Coastal LA County	Los Angeles—LAX (06–037–5005)	0.0	0.0	0.0	0.0
South Coastal LA County	North Long Beach (06–037–4002)	0.0	0.0	0.0	0.0
Central Los Angeles	Los Angeles-N. Main Street (06–037–1103)	0.0	1.0	0.0	0.3
West San Gabriel Valley	Pasadena (06–037–2005)	0.0	3.0	0.0	1.0
South San Gabriel Valley	Pico Rivera (06–037–1602)	0.0	1.0	0.0	0.3
Pomona/Walnut Valley	Pomona (06–037–1701)	5.0	1.0	0.0	2.0
West San Fernando Valley	Reseda (06–037–1201)	0.0	1.0	0.0	0.3
Santa Clarita Valley	Santa Clarita (06–037–6012)	8.1	5.1	1.1	4.8
Northwest Coastal LA County	West Los Angeles (06–037–0113)	0.0	1.0	0.0	0.3
ORANGE COUNTY:					
Central Orange County	Anaheim (06–059–0007)	0.0	0.0	0.0	0.0
North Coastal Orange County	Costa Mesa (06–059–1003)	0.0	0.0	0.0	0.0
North Orange County	La Habra (06–059–5001)	0.0	0.0	0.0	0.0
Saddleback Valley	Mission Viejo (06–059–2022)	0.0	0.0	0.0	0.0
RIVERSIDE COUNTY:					
Banning Airport	Banning (06–065–0012)	10.0	1.0	0.0	3.7
Banning Airport [b]	Morongo Reservation (06–065–1016)	12.1	2.7	4.0	6.3
Lake Elsinore	Lake Elsinore (06–065–9001)	6.1	1.0	0.0	2.4
Mira Loma	Mira Loma—Jurupa High School (06–065–0004)	6.9	1.1	0.0	2.7
Mira Loma	Mira Loma—Van Buren (06–065–8005)	4.0	0.0	0.0	1.3
Perris Valley	Perris (06–065–6001)	4.0	1.0	0.0	1.7
Metropolitan Riverside County	Rubidoux (06–065–8001)	8.0	0.0	1.0	3.0
SAN BERNARDINO COUNTY:					
Central San Bernardino Mountains	Crestline (06–071–0005)	16.2	7.0	8.0	10.4
Central San Bernardino Valley	Fontana (06–071–2002)	8.1	3.0	2.8	4.6
East San Bernardino Valley	Redlands (06–071–4003)	12.0	1.0	1.0	4.7
Central San Bernardino Valley	San Bernardino (06–071–9004)	11.1	2.0	1.0	4.7
Northwest San Bernardino Valley	Upland (06–071–1004)	9.1	3.0	1.0	4.4

[a] Data for year 2008 is from the Lynwood monitor, which was relocated to Compton in late 2008.
[b] This site is run by the Morongo Tribe of Mission Indians on the Morongo Reservation. It is not part of the SCAQMD monitoring network.
Source: Quicklook Report, June 16, 2011 (in the docket to this proposed action).

Region IX, to Dr. Chung S. Liu, Deputy Executive Officer, Science and Technology Advancement, SCAQMD, dated November 1, 2010, approving SCAQMD's 2009 Annual Air Quality Monitoring Network Plan.

[11] See letter from Deborah Jordan, Director, Air Division, U.S. EPA Region IX, to Barry Wallerstein, Executive Officer, SCAQMD, dated March 14, 2011, and enclosure titled, ''Technical System Audit Report, South Coast Air Quality Management District, April 13–April 16, 2010.''

[12] See, *e.g.,* letter from Chung S. Liu, Deputy Executive Office, Science and Technology Advancement, SCAQMD, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, certifying 2009 ozone data.

[13] See figure 1 in appendix A to SCAQMD's *Annual Air Quality Monitoring Network Plan* (July 2010) for a map of SCAQMD's ozone monitors in the South Coast.

[14] SCAQMD operates federal equivalent method (FEM) monitors for ozone, specifically, Thermo Electron model 49i and Teledyne/API 400 series ultraviolet absorption monitors. See SCAQMD's *Annual Air Quality Monitoring Network Plan* (July 2010). These monitoring devices have an EPA designation number EQOA–0880–047 and EQOA–0992–087, respectively. See EPA ''List of Designated Reference and Equivalent Methods, page 27 (February 1, 2011), available on the Internet at: *http://www.epa.gov/ttn/amtic/criteria.html.*

[15] The criteria for data completeness are met at most of the ozone monitors over the 2008–2010 period, but are not met for the ozone monitors at certain stations over the 2008–2010 period: Pomona, Morongo Reservation, Mira Loma (Jurupa High School), and Fontana. However, with respect to these four monitors, the failure to meet the completeness criteria does not bear on the question of whether the data is complete for the purposes of this determination because there are sufficient observed exceedances during the relevant three-year period to establish that the standard was not met by the applicable attainment date at those sites. See 40 CFR part 50, appendix H, section 3, first paragraph.

Generally, the highest ozone concentrations in the South Coast occur in the northern and eastern portions of the area. As shown in Table 1, the highest three-year average of expected exceedances at any site in the South Coast Air Basin for 2008–2010 is 10.4 (at Crestline, a site located at 4,500 feet elevation in the San Bernardino Mountains). The calculated exceedance rate of 10.4 represents a violation of the one-hour ozone standard (a three-year average of expected exceedances less than or equal to 1). For more information, please see ''National 1-hour primary and secondary ambient air quality standards for ozone'' (40 CFR 50.9) and ''Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR part 50, appendix H). Table 1 also shows that, while the most frequent violations occur in the San Bernardino Mountains, violations are widespread in eastern Riverside County and southwestern San Bernardino County as well as the Santa Clarita and east San Gabriel valleys in Los Angeles County.

Taking into account the extent and reliability of the applicable ozone monitoring network, and the data collected therefrom and summarized in Table 1, we propose to determine that the South Coast Air Basin failed to attain the one-hour ozone standard (as defined in 40 CFR part 50, appendix H) by the applicable attainment date (*i.e.,* November 15, 2010).

B. San Joaquin Valley One-Hour Ozone Nonattainment Area

In the San Joaquin Valley, CARB and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) are the agencies responsible for assuring that the area meets air quality monitoring requirements. The SLAMS network of ozone monitors in the valley includes monitors operated by SJVUAPCD and monitors operated by CARB. SJVUAPCD submits annual monitoring network plans to EPA. SJVUAPCD Network Plans describe the various monitoring sites operated by SJVUAPCD as well as those operated by CARB. These plans discuss the status of the air monitoring network, as required under 40 CFR 58.10. See SJVUAPCD's *Air Monitoring Network Plan,* dated June 30, 2010.

As noted above for the South Coast, EPA regularly reviews these annual plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to ozone, EPA has found that the area's network plans meet the applicable requirements under 40 CFR part 58.[16] Furthermore, we concluded in our Technical System Audit of the CARB Primary Quality Assurance Organization (PQAO),[17] conducted during summer 2007, that, with one exception, the combined ambient air monitoring network operated by CARB and SJVUAPCD in the San Joaquin Valley currently meets or exceeds the requirements for the minimum number of SLAMS monitoring sites for ozone. In our audit, we found that our regulations required an additional ozone monitor in the Visalia-Porterville Metropolitan Statistical Area (MSA) to meet the minimum SLAMS monitoring requirements. In response, SJVUAPCD opened an ozone monitoring station in Porterville. The new station began reporting ozone data in March 2010. CARB annually certifies that the data the agency submits to AQS are quality-assured, including data collected by CARB at monitoring sites in San Joaquin Valley.[18] SJVUAPCD does the same for monitors operated by the District.[19]

There were 22 ozone monitoring sites located throughout the San Joaquin Valley in calendar years 2008 through 2010: six within Kern County, five within Fresno County, three within Tulare County, two within Kings, San Joaquin and Stanislaus counties, and one each in Madera and Merced counties.[20] All of the sites monitor ozone concentrations on a continuous basis using ultraviolet absorption monitors. CARB or SJVUAPCD operate 19 of the 22 ozone monitoring sites; the National Park Service operates two ozone monitoring sites in Sequoia National Park in Tulare County; and the Tachi-Yokut Tribe operates an ozone monitor at the Santa Rosa Rancheria in Kings County.

Table 2 summarizes the ozone monitoring data from the various monitoring sites in the San Joaquin Valley by showing the expected exceedances per year and as an average over the 2008–2010 period. The data summarized in Table 2 are considered complete for the purposes of determining if the standard is met.[21]

[16] See, *e.g.,* letter from Matthew Lakin, Manager, Air Quality Analysis Office, Air Division, EPA Region IX, to Scott Nester, Planning Director, SJVUAPCD, dated November 1, 2010, approving SJVUAPCD's 2009 Ambient Air Monitoring Network Plan.

[17] A primary quality assurance organization is responsible for a group of monitoring stations for which data quality assessments can be pooled. See 40 CFR 58.1. CARB is the lead PQAO for all the air districts in the Sacramento Metro Area.

[18] See, *e.g.,* letter from Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, certifying calendar year 2010 ambient air quality data and quality assurance data, dated April 28, 2011.

[19] See, *e.g.,* letter from Seyed Sadredin, Executive Director/Air Pollution Control Officer, letter to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, certifying in part calendar year 2010 ambient air quality data and quality assurance data, dated June 13, 2011. The District's 2010 partial certification dated June 13, 2011 covered ozone data.

[20] See figure 1 in SJVUAPCD's *Air Monitoring Network Plan* (June 30, 2010) for a map of the ozone monitors in the San Joaquin Valley.

[21] The criteria for data completeness are met at most of the ozone monitors over the 2008–2010 period, but are not met for the ozone monitors at certain stations over the 2008–2010 period: Fresno (Drummond Street), Clovis, Hanford/Corcoran, and Sequoia National Park (06–017–0009). However, with respect to all of these monitors except for Fresno (Drummond Street), the failure to meet the completeness criteria does not bear on the question of whether the data is complete for the purposes of this determination because there are sufficient observed exceedances during the relevant three-year period to establish that the standard was not met by the applicable attainment date at those sites. See 40 CFR part 50, appendix H, section 3, first paragraph. Moreover, despite the lack of complete data from Fresno (Drummond Street), sufficient data from the network as a whole exist to support the proposed determination of failure to attain the one-hour ozone NAAQS by the applicable attainment date within the San Joaquin Valley.

TABLE 2—ONE-HOUR OZONE DATA FOR THE SAN JOAQUIN VALLEY ONE-HOUR OZONE NONATTAINMENT AREA

Site (AQS ID)	Expected exceedances by year			Expected exceedances 3-yr average
	2008	2009	2010	2008–2010
FRESNO COUNTY:				
Clovis (06–019–5001)	8.3	0.0	3.0	3.8
Fresno—Drummond Street (06–019–0007)	0.0	0.0	0.0	0.0
Fresno—North First Street (06–019–0008)	7.1	0.0	2.0	3.0
Fresno—Sierra Skypark #2 (06–019–0242)	2.1	0.0	2.4	1.5
Parlier (06–019–4001)	2.0	0.0	1.1	1.0
KERN COUNTY:				
Arvin (06–029–5001)	14.3	3.1	2.4	6.6
Bakersfield (06–029–0014)	1.0	0.0	0.0	0.3
Edison (06–029–0007)	5.0	2.0	1.0	2.7
Maricopa (06–029–0008)	0.0	0.0	0.0	0.0
Oildale (06–029–0232)	0.0	0.0	0.0	0.0
Shafter (06–029–6001)	1.0	0.0	0.0	0.3
KINGS COUNTY:				
Hanford/Corcoran [a] (06–031–1004/06–031–0004)	4.4	0.0	2.7	2.4
Santa Rosa Rancheria (06–031–0500)	2.2	0.0	0.0	0.7
MADERA COUNTY:				
Madera (06–039–0004)	0.0	0.0	0.0	0.0
MERCED COUNTY:				
Merced (06–047–0003)	3.1	0.0	0.0	1.0
SAN JOAQUIN COUNTY:				
Stockton (06–077–1002)	0.0	0.0	0.0	0.0
Tracy (06–077–3005)	0.0	0.0	0.0	0.0
STANISLAUS COUNTY:				
Modesto (06–099–0005)	1.0	0.0	0.0	0.3
Turlock (06–099–0006)	3.0	1.0	0.0	1.3
TULARE COUNTY:				
Sequoia National Park—Lower Kaweah (06–107–0006)	1.0	0.0	0.0	0.3
Sequoia National Park—Sequoia and Kings Canyon Nat'l Park (06–107–0009)	6.9	0.0	0.0	2.3
Visalia (06–107–2002)	3.0	0.0	0.0	1.0

[a] The data reflect the combined data from the Corcoran site (2008 and 2009) and the Hanford site (2010). The Hanford site was closed due to renovation during 2008 and 2009, and an ozone monitor was added to the Corcoran site to serve as a temporary replacement during the renovation.

Source: Quicklook Report, May 19, 2011 (in the docket to this proposed action).

It should be noted that CARB and SJVUAPCD have flagged certain ozone exceedances in years 2008 and 2010 as exceptional events,[22] but because EPA has not yet concurred on, or determined to exclude, any of the flagged events, Table 2 includes the flagged data. Generally, the highest ozone concentrations in San Joaquin Valley occur in the central (*i.e.,* in and around the city of Fresno) and the southern portions (*i.e.,* southeast of Bakersfield) of the area. As shown in Table 2, the highest three-year average of expected exceedances at any site in the San Joaquin Valley for 2008–2010 is 6.6 at Arvin, a site located with mountains to the east, west, and south. The calculated exceedance rate of 6.6 represents a violation of the one-hour ozone standard (a three-year average of expected exceedances less than or equal to 1). Even if EPA were to concur on all of the flagged exceedances and determine that they qualify for exclusion for the purpose of determining attainment, the calculated exceedance rate at Arvin would be 3.9, which still constitutes a violation of the standard.

Taking into account the extent and reliability of the applicable ozone monitoring network, and the data collected therefrom and summarized in Table 2, we propose to determine that the San Joaquin Valley failed to attain the one-hour ozone standard (as defined in 40 CFR part 50, appendix H) by the applicable attainment date (*i.e.,* November 15, 2010).

[22] Under CAA section 319(b)(1)(A), the term ''exceptional event'' means an event that—(i) Affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event. Under CAA section 319(b)(1)(B), the term ''exceptional event'' does not include—(i) Stagnation of air masses or meteorological inversions; (ii) a meteorological event involving high temperatures or lack of precipitation; or (iii) air pollution relating to source noncompliance. EPA's regulations referred to in CAA section 309(b)(1)(A) were promulgated at 40 CFR 50.14.

C. Southeast Desert One-Hour Ozone Nonattainment Area

In the Southeast Desert, CARB is the agency responsible for assuring that the area meets air quality monitoring requirements. The Antelope Valley Air Quality Management District (AVAQMD) operates monitors in the Los Angeles County portion of the Southeast Desert; the Mojave Desert Air Quality Management District (MDAQMD) operates monitors in the San Bernardino County portion of the Southeast Desert; and SCAQMD operate monitors in the Riverside County portion of the Southeast Desert. All three agencies submit annual monitoring network plans to EPA. These plans discuss the status of the air monitoring network, as required under 40 CFR 58.10.

SCAQMD's annual network plans and data certifications, as well as EPA's TSA of SCAQMD's ambient air monitoring program, are discussed above in connection with the South Coast Air Basin. With respect to the annual network plans submitted by AVAQMD

and MDAQMD, we have reviewed these plans and found that they meet the applicable requirements for such plans.[23] The TSA we conducted in 2007 of the CARB PQAO included a review of the network requirements in AVAQMD and MDAQMD. In the TSA, we concluded that the combined ambient air monitoring networks operated by CARB and the air districts currently meet or exceed the requirements for the minimum number of SLAMS monitoring sites for ozone in the Southeast Desert. Also, AVAQMD and MDAQMD annually certify that the data submitted to AQS are quality-assured.[24]

There were nine ozone monitoring sites located throughout the Southeast Desert in calendar years 2005 through 2007: one in Los Angeles County, three in Riverside County, and five in San Bernardino County.[25] All of the sites monitor ozone concentrations on a continuous basis using ultraviolet absorption monitors.[26] AVAQMD operates the one monitor in Los Angeles County. SCAQMD operates two of the three monitors in Riverside County; the third monitor is operated by the National Park Service at Joshua Tree National Park. MDAQMD operates four of the five sites in San Bernardino County; the fifth monitor is operated by the National Park Service at Joshua Tree National Park.

Table 3 summarizes the ozone monitoring data from the various monitoring sites in the Southeast Desert, showing the expected exceedances per year and as an average over the 2005–2007 period. The data summarized in Table 3 are considered complete for the purposes of determining if the standard is met.[27]

TABLE 3—ONE-HOUR OZONE DATA FOR THE SOUTHEAST DESERT ONE-HOUR OZONE NONATTAINMENT AREA

General location	Site (AWS ID)	Expected exceedances by year			Expected exceedances 3-yr average
		2005	2006	2007	2005–2007
Antelope Valley	Lancaster (06–037–9033)	1.0	2.0	0.0	1.0
Coachella Valley	Indio (06–065–2002)	0.0	0.0	0.0	0.0
Joshua Tree National Park	Cottonwood Visitor Center (06–065–0008)	NA	0.0	0.0	0.0
Coachella Valley	Palm Springs (06–065–5001)	4.0	2.0	1.0	2.3
Northern portion of SE Desert AQMA	Barstow (06–071–0001)	0.0	0.0	0.0	0.0
SW portion of SE Desert AQMA	Hesperia (06–071–4001)	3.0	2.0	2.0	2.3
SW portion of SE Desert AQMA	Phelan (06–071–0012)	2.0	2.0	0.0	1.3
SW portion of SE Desert AQMA	Victorville (06–071–0306)	2.0	1.0	0.0	1.0
Joshua Tree National Park	Yucca Valley (06–071–9002)	2.0	1.0	1.0	1.3

NA = No data is available.
Source: Quicklook Report, May 11, 2011 (in the docket to this proposed action).

Generally, the highest ozone concentrations in the Southeast Desert occur in the far southwestern portion of the area, near mountain passes through which pollutants are transported to the Southeast Desert from the South Coast Air Basin. As shown in Table 3, the highest three-year average of expected exceedances at any site in the Southeast Desert for 2005–2007 is 2.3 at Palm Springs in Riverside County and Hesperia in San Bernardino County. The calculated exceedance rate of 2.3 represents a violation of the one-hour ozone standard (a three-year average of expected exceedances less than or equal to 1).[28]

Taking into account the extent and reliability of the applicable ozone monitoring network, and the data collected therefrom and summarized in Table 3, we propose to determine that the Southeast Desert failed to attain the one-hour ozone standard (as defined in 40 CFR part 50, appendix H) by the applicable attainment date (*i.e.,* November 15, 2007).

IV. What is the effect of the proposed determinations?

A final determination of a Severe or Extreme area's failure to attain by its one-hour ozone NAAQS attainment date would trigger the obligation to implement one-hour contingency measures for failure to attain under section 172(c)(9) and fee programs under sections 182(d)(3), 182(f), and 185. Section 172(c)(9) requires one-hour ozone SIPs, other than for ''Marginal'' areas, to provide for implementation of specific measures (referred to herein as ''contingency measures'') to be undertaken if the area fails to attain the NAAQS by the attainment date. The effect of the proposed determinations would be to give effect to any one-hour ozone contingency measures that are not already in effect within the three subject California nonattainment areas.

Section 182(d)(3) requires SIPs to include the provisions required under section 185, and section 185 requires one-hour ozone SIPs in areas classified as ''Severe'' or ''Extreme'' to provide that, if the area has failed to attain the standard by the applicable attainment date, each major stationary source of ozone precursors located in the area must begin paying a fee [computed in accordance with section 185(b)] to the State. Section 182(f) extends the section 185 requirements, among others, that apply to major stationary sources of VOCs to major stationary sources of NO_X unless EPA has waived such

[23] See, *e.g.,* letter dated April 30, 2008 from Sean P. Hogan, Manager, Air Quality Analysis Office, EPA Region IX, to Eldon Heaston, Executive Director, MDAQMD.

[24] See, *e.g.,* letter dated June 27, 2007 from Chris Collins, A/Q Supervisor, MDAQMD, to Wayne Nastri, Regional Administrator, EPA Region IX, certifying calendar year 2006 ambient air quality data in both MDAQMD and AVAQMD.

[25] See figures 5 and 11 from CARB's *State and Local Air Monitoring Network Plan* (June 2009) for illustrations of the locations of the ozone monitors within the Southeast Desert.

[26] AVAQMD and MDAQMD operate Federal Equivalent Method (FEM) monitors for ozone, specifically, Teledyne/API 400 series ultraviolet absorption monitors.

[27] The criteria for data completeness are met at all of the ozone monitors in the Southeast Desert over the 2005–2007 period except for the ozone monitor at the Joshua Tree National Park (06–065–0008). Despite the lack of complete data from that one monitor, sufficient data from the network as a whole exist to support the proposed determination of failure to attain the one-hour ozone NAAQS by the applicable attainment date within the Southeast Desert.

[28] A preliminary review of more recent data (2008–2010) for the Southeast Desert suggests that only one monitoring site (the site in Phelan, San Bernardino County) remains in violation of the one-hour ozone standard with a calculated expected annual exceedance rate of 1.7. However, due to the four exceedances recorded in 2010, the soonest that the Phelan site could be determined to be attaining the one-hour ozone standard will be in 2014 (assuming such a determination is supported by 2011–2013 data).

requirements for NO_X sources in the particular nonattainment area.

The three subject ozone nonattainment areas, the South Coast, the San Joaquin Valley, and the Southeast Desert, lie within the jurisdictions of four California air districts: The SCAQMD, the SJVUAPCD, the AVAQMD, and the MDAQMD. Each of the four air districts has adopted rules intended to comply with sections 182(d)(3) and 185 of the Act and CARB has submitted them to EPA for approval into the SIP. EPA has taken action on one of the rules, SJVUAPCD Rule 3170. See 75 FR 1716 (January 13, 2010). Since then, SJVUAPCD Rule 3170 has been revised, and EPA has recently proposed approval of the amended rule. See 76 FR 45212 (July 28, 2011). EPA has not yet taken action on the rules developed by the other three districts (SCAQMD Rule 317, AVAQMD Rule 315, and MDAQMD Rule 315, all of which were submitted on April 22, 2011). Another effect of the proposed determinations of failure to attain the 1-hour ozone standard by the applicable attainment dates would be to give effect to the section 185 requirements to the extent they are not already in effect within the three subject California nonattainment areas.

V. Proposed Actions

Under EPA's authority under CAA section 301(a) to ensure implementation of one-hour ozone anti-backsliding requirements, EPA is proposing to determine that the South Coast, the San Joaquin Valley, and the Southeast Desert failed to attain the one-hour ozone standard by the applicable attainment dates. For South Coast and San Joaquin Valley, quality-assured and certified data collected during 2008–2010 show that these two ''Extreme'' one-hour ozone nonattainment areas failed to attain the standard by November 15, 2010. For Southeast Desert, a ''Severe-17'' one-hour ozone nonattainment area, quality-assured and certified data for 2005–2007 show that the area failed to attain the standard by November 15, 2007.

These proposed determinations, if finalized, would bear on the areas' obligations with respect to certain one-hour standard anti-backsliding requirements whose implementation is triggered by a failure to attain by the applicable attainment date: section 172(c)(9) contingency measures for failure to attain and sections 182(d)(3) and 185 major stationary source fee programs. Through this proposed rule, EPA is soliciting comments on the above determinations.

VI. Statutory and Executive Order Reviews

These actions propose to make determinations that certain areas did not attain the applicable standard based on air quality, and do not impose any requirements beyond those required by statute. For that reason, these proposed actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 1, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–23544 Filed 9–13–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0604–201140; FRL–9464–1]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Atlanta; Determination of Attaining Data for the 1997 Annual Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two determinations regarding the Atlanta, Georgia, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as the ''Atlanta Area'' or ''Area''). First, EPA is proposing to determine that the Area has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). This proposed determination of attaining data is based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. If EPA finalizes this proposed determination of attaining data, the requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended so long as the Area continues to attain the annual $PM_{2.5}$ NAAQS. Second, EPA is also proposing to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

DATES: Comments must be received on or before October 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0604, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov*.
3. *Fax:* (404) 562–9040.
4. *Mail:* EPA–R04–OAR–2010–0604, 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.
5. *Hand Delivery:* Lynorae Benjamin, Chief, 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. 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 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0604. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at 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: Sara Waterson or Joel Huey, 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. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov*. Mr. Huey may be reached by phone at (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What actions is EPA taking?
II. What is the background for these actions?
III. Does the Atlanta Area meet the snnual $PM_{2.5}$ NAAQS?
A. Criteria
B. Atlanta Area Air Quality
C. Has the Atlanta Area met the 1997 annual $PM_{2.5}$ air quality standard?
IV. What is the effect of these actions?
V. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA is proposing to determine that the Atlanta Area (comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, De Kalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Heard, Henry, Newton, Paulding, Putnam, Rockdale, Spalding and Walton Counties) has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. The proposal is based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 monitoring period that show that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. EPA is also proposing to determine, in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664), that the Atlanta Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

II. What is the background for these actions?

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m^3. See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Atlanta Area was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. See 40 CFR 81.301.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour NAAQS of 35 μg/m^3 based on a 3-year average of the 98th percentile of 24-hour concentrations. On November 13, 2009, EPA designated the Atlanta Area as nonattainment for the 2006 24-hour NAAQS (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Atlanta Area was designated as nonattainment for the annual NAAQS but attainment for the 24-hour NAAQS. Thus, today's action does not address attainment of either the 1997 or the 2006 24-hour NAAQS.

In response to legal challenges of the annual NAAQS promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this NAAQS to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 annual NAAQS would also indicate attainment of the remanded 2006 annual NAAQS.

On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ NAAQS. This

rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the NAAQS, as discussed below.

III. Does the Atlanta area meet the annual $PM_{2.5}$ NAAQS?

A. Criteria

Today's proposed rulemaking assesses whether (1) The Atlanta Area has attained the 1997 annual $PM_{2.5}$ NAAQS, based on the most recent three years of quality-assured data, and (2) whether the Area attained that NAAQS by its applicable attainment date of April 5, 2010. The Atlanta Area is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, De Kalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Heard, Henry, Newton, Paulding, Putnam, Rockdale, Spalding and Walton Counties.

Under EPA regulations at 40 CFR 50.7, the 1997 annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area.

B. Atlanta Area Air Quality

EPA has reviewed the ambient air monitoring data for the Atlanta Area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System (AQS) database. This review addresses air quality data collected in two 3-year periods. The period 2007–2009 is used for the determination of attainment by attainment date because that was the last period of certified data prior to the required attainment date of April 5, 2010. The period 2008–2010 is used for the determination of attaining data because that is the most recent period of certified data available now available to EPA.

Table 1 and the related discussion below show that, based on EPA's analysis of data for 2007–2009, the Area attained the 1997 annual $PM_{2.5}$ standard by its attainment date of April 5, 2010. In addition, Table 2 and the related discussion below show that the Area continues to attain the standard based on available data for 2008–2010. There were data completeness issues at the Powder Springs, E. Rivers School, Fire Station #8/Georgia Tech, Gwinnett Tech, and Yorkville monitors for both the 2007–2009 and 2008–2010 periods. EPA performed a quarterly maximum data substitution test using 40 CFR Part 50 Appendix N and the April 1999 *Guideline on Data Handling Conventions for the PM NAAQS* (*http://epa.gov/ttncaaa1/t1/memoranda/pmfinal.pdf*) for the monitors with less than 75 percent complete data. Further discussion on the data substitution can be found in the technical support document (TSD) for this proposal. The three year annual design values both with and without data substitution are provided in Table 1 and Table 2 below. EPA's review of these data indicates that the Atlanta Area has met the 1997 annual $PM_{2.5}$ NAAQS by the attainment date of April 5, 2010.

TABLE 1—2007–2009 ANNUAL AVERAGE $PM_{2.5}$ CONCENTRATIONS FOR MONITORS IN THE ATLANTA, GEORGIA NONATTAINMENT AREA

Location	Site No.	Annual average concentration ($\mu g/m^3$) without data substitution	Annual average concentration ($\mu g/m^3$) with data substitution
Georgia DOT	13–063–0091	13.5	N/A
GA National Guard	13–067–0003	13.4	N/A
Powder Springs	13–067–0004	12.6	13.1
South DeKalb	13–089–0002	13.0	N/A
Police Dept.	13–089–2001	13.3	N/A
E. Rivers School	13–121–0032	13.4	14.2
Fire Station #8 [1]	13–121–0039	9.8	13.8
Gwinnett Tech	13–135–0002	12.7	13.3
Gainesville	13–139–0003	11.8	12.8
Yorkville	13–223–0003	12.0	12.7

N/A—Not Applicable.

TABLE 2—2008–2010 ANNUAL AVERAGE $PM_{2.5}$ CONCENTRATIONS FOR MONITORS IN THE ATLANTA, GEORGIA NONATTAINMENT AREA

Location	Site No.	Annual average concentration ($\mu g/m^3$) without data substitution	Annual average concentration ($\mu g/m^3$) with data substitution
Georgia DOT	13–063–0091	12.9	N/A
GA National Guard	13–067–0003	12.3	N/A
Powder Springs	13–067–0004	11.9	12.3
South Dekalb	13–089–0002	12.1	N/A
Police Dept.	13–089–2001	12.3	N/A
E. Rivers School	13–121–0032	12.3	13.0
Fire Station #8 [2]	13–121–0039	11.4	13.6
Gwinnett Tech	13–135–0002	12.1	12.5
Gainesville	13–139–0003	11.2	11.9

[1] Fire Station #8 was relocated to the Georgia Tech campus in 2007 and assigned a separate AQS number. It moved back to Fire Station #8 at the end of 2008 and resumed normal operation. The annual average design value with data substitution was calculated by combining the data records for Fire Station #8 and Georgia Tech.

TABLE 2—2008–2010 ANNUAL AVERAGE $PM_{2.5}$ CONCENTRATIONS FOR MONITORS IN THE ATLANTA, GEORGIA NONATTAINMENT AREA—Continued

Location	Site No.	Annual average concentration (μg/m³) without data substitution	Annual average concentration (μg/m³) with data substitution
Yorkville	13–223–0003	11.0	11.6

N/A—Not Applicable.

The Powder Springs monitor has a 2007–2009 $PM_{2.5}$ annual design value of 12.6 μg/m³. Since the monitor had one incomplete quarter during the second quarter of 2009, data substitution was conducted. The annual mean was recalculated, and the resulting 2007–2009 $PM_{2.5}$ annual design value is 13.1 μg/m³. The current 2008–2010 $PM_{2.5}$ annual design value is 11.9 μg/m³. Data substitution was conducted for the second quarter of 2009. The annual mean was recalculated, and the resulting 2008–2010 $PM_{2.5}$ annual design value is 12.3 μg/m³. This monitor is considered attaining with design values of 12.6 μg/m³ and 11.9 μg/m³.

The E. Rivers School monitor did not meet data completeness for the second and third quarters of 2009 due to roof repairs during the summer of 2009 that were out of the State's control. Georgia Environmental Protection Division appropriately notified Region 4 of the temporary site closure. Additionally, the fourth quarter in 2008 is also incomplete. The 2007–2009 $PM_{2.5}$ annual design value is 13.4 μg/m³ and the 2008–2010 $PM_{2.5}$ annual design value is 12.3 μg/m³. Data substitution was conducted and the recalculated annual design values are 14.2 μg/m³ and 13.0 μg/m³ respectively. This monitor is considered attaining with design values of 13.4 μg/m³ for the 2007–2009 monitoring period and 12.3 μg/m³ for the 2008–2010 monitoring period.

EPA's Office of Air Quality Planning and Standards (OAQPS) conducted an additional statistical analysis for the E. Rivers School monitor which indicates, as a weight of evidence, that despite the prolonged shut-down of the E. Rivers School monitor, the monitor would have attained in the 2007–2009 design value period. To evaluate air quality at the E. Rivers School monitor, EPA applied statistical analysis using data from other sites in the area. The approach, summarized in this section and further described in the TSD, is appropriate for this Area but may or may not be suitable for other areas with less than complete data. EPA will evaluate the appropriateness of this analytical approach on a case-by-case basis for determinations regarding each area with less than complete data.

The first step in the analysis was to assess the correlation of concentrations at the E. Rivers School site with concentrations at other sites in the Area. The monitor in the Area that had the highest correlation with the E. Rivers School site was the Georgia DOT monitor; therefore, subsequent analyses used data from this site. The second step was to develop a regression equation expressing the relationship between concentrations at the E. Rivers School and the Georgia DOT monitors. This regression equation was used to estimate values at the E. Rivers School site on days during quarters with incomplete data when the E. Rivers School site did not measure concentrations. A 2007–2009 design value for the E. Rivers School site was then calculated using these estimated values. Under this method, the 2007–2009 design value for the E. Rivers School site was estimated to be 13.6 μg/m³.

This estimated design value was then analyzed using a statistical method, referred to as the ''bootstrap method,'' that involves the use of regression residuals. In this analysis, EPA repeated the regression analysis 1,000 times with different values within the probability distribution of E. Rivers School concentrations that could be associated with given concentrations at the Georgia DOT monitor. From this analysis, as described in detail in the TSD, EPA determined that the upper end of the range of potential 2007–2009 design values obtained did not exceed the NAAQS. No exceedances of the NAAQS resulted from application of the statistical analysis. Therefore, EPA concluded that for 2007–2009, the annual average concentration of the E. Rivers School monitor is below the NAAQS.

The Fire Station #8 monitor was relocated to the Georgia Tech campus and was assigned a separate AQS number. It was moved back to Fire Station #8 at the end of 2008 and resumed normal operation. There were no data completeness issues at either site during the times each site was operated. The data records of the two sites were combined and resulted in a 13.8 μg/m³ design value for the 2007–2009 design value period. As an additional weight of evidence, the bootstrap analysis described above for the E. Rivers School site was also conducted for the Fire Station #8 monitor and passed with a 2007–2009 design value of 14.1 μg/m³. The South DeKalb monitor had the highest correlation with the Fire Station #8 monitor. This bootstrap analysis is further explained in the TSD for this document. The data records of the two sites were also combined for the 2008–2010 design value period, which resulted in a 13.6 μg/m³ design value.

The Gwinnett Tech monitor has a 2007–2009 $PM_{2.5}$ annual design value of 12.7 μg/m³. Since the monitor had one incomplete quarter during the fourth quarter of 2008, data substitution was conducted. The annual mean was recalculated, and the resulting 2007–2009 $PM_{2.5}$ annual design value is 13.3 μg/m³. The 2008–2010 $PM_{2.5}$ annual design value is 12.1 μg/m³. Data substitution was conducted for the fourth quarter of 2008. The annual mean was recalculated, and the resulting 2008–2010 $PM_{2.5}$ annual design value is 12.5 μg/m³. This monitor is considered attaining with design values of 12.7 μg/m³ and 12.1 μg/m³, respectively.

The Gainesville monitor has a 2007–2009 $PM_{2.5}$ annual design value of 11.8 μg/m³. Since the monitor had two incomplete quarters during the third and fourth quarters of 2008, data substitution was conducted. The annual mean was recalculated, and the resulting 2007–2009 $PM_{2.5}$ annual design value is 12.8 μg/m³. The current 2008–2010 $PM_{2.5}$ annual design value is 11.2 μg/m³. Data substitution was conducted for the third and fourth quarters of 2008. The annual mean was recalculated, and the resulting 2008–2010 $PM_{2.5}$ annual design value is 11.9 μg/m³. This monitor is considered

[2] Fire Station #8 was relocated to the Georgia Tech campus in 2007 and assigned a separate AQS number. It moved back to Fire Station #8 at the end of 2008 and resumed normal operation. The annual average design value with data substitution was calculated by combining the data records for Fire Station #8 and Georgia Tech.

attaining with design values of 11.8 μg/m³ and 11.2 μg/m³.

The Yorkville monitor has a 2007–2009 $PM_{2.5}$ annual design value of 12.0 μg/m³. Since the monitor had one incomplete quarter during the third quarter of 2009, data substitution was conducted. The annual mean was recalculated, and the resulting 2007–2009 $PM_{2.5}$ annual design value is 12.7 μg/m³. The current 2008–2010 $PM_{2.5}$ annual design value is 11.0 μg/m³. Data substitution was conducted for the third quarter of 2009. The annual mean was recalculated, and the resulting 2008–2010 $PM_{2.5}$ annual design value is 11.6 μg/m³. This monitor is considered attaining with design values of 12.0 μg/m³ and 11.0 μg/m³.

EPA believes that the Atlanta Area is now meeting the 1997 annual $PM_{2.5}$ NAAQS. Since few data are available for 2011, the 2008–2010 data represent the most recent available data for EPA to use in its assessment. On the basis of this review, EPA is proposing to determine that the Atlanta Area has attained the 1997 annual $PM_{2.5}$ NAAQS. EPA is soliciting public comments on its proposal to determine that the Atlanta Area has attained the 1997 annual $PM_{2.5}$ NAAQS with 2007–2009 as well as 2008–2010 data, and attained the 1997 annual $PM_{2.5}$ NAAQS by the April 5, 2010, attainment date using 2007–2009 data.

C. Has the Atlanta area met the 1997 annual $PM_{2.5}$ air quality standard?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded the data in the EPA AQS database, for the Atlanta Area from 2007 through the present time. On the basis of that review, EPA proposes to determine that this Area has attained and continues to attain the 1997 annual $PM_{2.5}$ NAAQS based on the quality-assured data for the 2007–2009 monitoring period, which demonstrates attainment by April 5, 2010, and the 2008–2010 monitoring period. In addition, based on EPA's review of the data for 2007–2009, and in accordance with section 179(c)(1) of the CAA and EPA's regulations, EPA proposes to determine that the Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

IV. What is the effect of these actions?

If this proposed determination of attaining data is made final, the requirements for the Atlanta Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS would be suspended for so long as the Area continues to attain the $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c). Notably, as described below, any such determination would not be equivalent to the redesignation of the Area to attainment for the annual $PM_{2.5}$ NAAQS.

If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Atlanta Area, and the Area would thereafter have to address the applicable requirements. *See* 40 CFR 51.1004(c).

Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this proposed action does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Atlanta Area would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

This action is only a proposed determination that the Atlanta Area has attained the 1997 annual $PM_{2.5}$ NAAQS and has done so by the April 5, 2010, attainment date. Today's action does not address the 24-hour $PM_{2.5}$ NAAQS.

If the Atlanta Area continues to monitor attainment of the annual $PM_{2.5}$ NAAQS, the requirements for the Atlanta Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the annual $PM_{2.5}$ NAAQS will remain suspended.

In addition, if EPA's separate and independent proposed determination that the Area has attained the 1997 annual $PM_{2.5}$ standard by its applicable attainment date (April 5, 2010) is finalized, EPA will have met its requirement pursuant to section 179(c)(1) of the CAA to make a determination based on the Area's air quality data as of the attainment date whether the Area attained the standard by that date.

These two actions described above are proposed determinations regarding the Atlanta Area's attainment only with respect to the 1997 annual $PM_{2.5}$ NAAQS. Today's actions do not address the 24-hour $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

These actions propose to make determinations of attainment based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and it would not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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, these proposed 1997 annual $PM_{2.5}$ NAAQS determinations for the Atlanta Area do 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.

For purposes of judicial review, the two of the these determinations approved by today's action are severable from one another.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 1, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–23527 Filed 9–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0735; FRL–9464–2]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from confined animal facilities (CAFs) and biosolids, animal manure, and poultry litter operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 14, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0735, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Sona Chilingaryan, EPA Region IX, (415) 972–3368, *chilingaryan.sona@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4570	Confined Animal Facilities	10/21/10	4/5/11
SJVUAPCD	4565	Biosolids, Animal Manure, and Poultry Litter Operations	3/15/07	8/24/07

On September 17, 2007, EPA determined that the submittal for SJVUAPCD Rule 4565 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review. On May 6, 2011, EPA determined that the submittal for SJVUAPCD Rule 4570 met the completeness criteria.

B. Are there other versions of these rules?

There are no previous versions of Rule 4565. On January 14, 2010, EPA finalized a limited approval of an earlier version of Rule 4570 into the SIP. Simultaneously, EPA finalized a limited disapproval of the rule for exempting major source poultry operations and for an inadequate RACT analysis for swine and poultry (75 FR 2079). The SJVUAPCD adopted revisions to Rule 4570 on October 21, 2010, partly to address these issues, and we are proposing action on that version of the rule.

C. What is the purpose of the submitted rule and rule revision?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 4570 requires management practices to reduce VOCs from dairies, beef feedlots, poultry houses, and other confined animal facilities. Rule 4565 requires management practices to reduce VOC emissions from land-application of

biosolids and disposal at landfills and small and medium sized composting/co-composting operations. Rule 4565 also requires add-on controls at large composting/co-composting operations. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), must not interfere with any applicable requirements concerning attainment and reasonable further progress (RFP), and must not relax existing requirements (see sections 110(l) and 193). Section 172(c)(1) of the Act also requires implementation of all reasonably available control measures (RACM) as expeditiously as practicable in nonattainment areas. The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rules 4565 and 4570 must fulfill RACT. Additionally, the RACM requirement in CAA section 172(c)(1) applies to this area. In this proposal, we are only evaluating RACT. In a separate rulemaking, EPA will take action on the State's RACM demonstrations for the 8-hour ozone NAAQS based on an evaluation of the control measures submitted as a whole and their overall potential to advance the applicable attainment date in the San Joaquin Valley. See 40 CFR 51.912(d) and 51.1010.

Guidance and policy documents that we use to evaluate enforceability and RACT and RACM requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

4. ''State Implementation Plans, General Preamble for the Implementation of Title I of the Clean Air Amendments of 1990,'' 57 FR 13498, April 16, 1992.

5. ''Preamble, Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard,'' 70 FR 71612, Nov. 29, 2005.

6. Letter from William T. Hartnett to Regional Air Division Directors, ''RACT Qs & As—Reasonable Available Control Technology (RACT) Questions and Answers,'' May 18, 2006.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The revisions to Rule 4570 address the deficiencies we noted in our January 14, 2010 limited disapproval action, and include lowering the rule applicability threshold for poultry facilities to include all major sources and an adequate RACT analysis for swine and poultry facilities. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

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

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP. If finalized as proposed, approval of Rule 4570 would terminate all CAA sanction and FIP implications associated with EPA's 2010 limited disapproval of a previous version of this rule.

III. Statutory and Executive Order Reviews

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

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

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 31, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–23550 Filed 9–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–9464–4]

Ohio: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Ohio has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Ohio's application with regards to Federal requirements, and is proposing to authorize the State's changes.

DATES: Comments on this proposed rule must be received on or before October 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–RCRA–2011–0530 by one of the following methods:

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

E-mail: westefer.gary@epa.gov.

Mail: Gary Westefer, Ohio Regulatory Specialist, LR–8J, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Instructions: Direct your comments to Docket ID Number EPA–R05–RCRA–2011–0530. 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 or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epagov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some of the information is not publicly available, *e.g.,* CBI or other information for which 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. You may view and copy Ohio's application from 9 a.m. to 4 p.m. at the following addresses: U.S. EPA Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois, contact: Gary Westefer (312) 886–7450; or Ohio Environmental Protection Agency, Lazarus Government Center, 50 West Town Street, Suite 700, Columbus, Ohio, contact: Kit Arthur (614) 644–2932.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Ohio Regulatory Specialist, U.S. EPA Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450, e-mail *westefer.gary@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and request EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions have we made in this rule?

We conclude that Ohio's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Ohio final authorization to operate its hazardous waste program with the changes described in the authorization application. Ohio has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Ohio, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision, once finalized, is that a facility in Ohio subject to RCRA would have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Ohio has enforcement responsibilities under its State hazardous waste program for RCRA violations, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

1. Do inspections, and require monitoring, tests, analyses or reports;
2. Enforce RCRA requirements and suspend or revoke permits; and
3. Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which Ohio is being authorized are already effective, and will not be changed by EPA's final action.

D. What happens if EPA receives adverse comments on this action?

If EPA receives adverse comments on this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has Ohio previously been authorized for?

Ohio initially received final authorization on June 28, 1989, effective June 30, 1989 (54 FR 27170) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on April 8, 1991, effective June 7, 1991 (56 FR 14203) as corrected June 19, 1991, effective August 19, 1991 (56 FR 28088); July 27, 1995, effective September 25, 1995 (60 FR 38502); October 23, 1996, effective December 23, 1996 (61 FR 54950); January 24, 2003, effective January 24, 2003 (68 FR 3429); January 20, 2006, effective January 20, 2006 (71 FR 3220), and October 29, 2007, effective October 29, 2007 (72 FR 61063).

F. What changes are we proposing with today's action?

On May 9, 2011, Ohio submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We are now proposing to authorize, subject to receipt of written comments that oppose this action, Ohio's hazardous waste program revision. We propose to grant Ohio final authorization for the following program changes:

OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of Federal requirement *(include checklist number, if relevant)*	**Federal Register** date and page *(and/or RCRA statutory authority)*	Analogous State authority
Amendments to Land Disposal Restrictions for First Third Scheduled Wastes; Checklist 50.1.	February 27, 1989, 54 FR 8264	OAC 3745–59–41(A); Effective June 29, 1990.
Changes to Part 124 Not Accounted for by Present Checklists; Checklist 70.	April 1, 1983, 48 FR 14146 ..... June 30, 1983, 48 FR 30113	OAC 3745–50–21; Effective July 14, 1997, amended September 5, 2010.
	July 26, 1988, 53 FR 28118	OAC 3745–50–40; Effective July 14, 1997, amended February 16, 2009.
	September 26, 1988, 53 FR 37396 .... January 4, 1989, 54 FR 246	50–39; 50–51; Effective July 14, 1997, amended September 5, 2010.
NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Technical Corrections; Checklist 188.1.	May 14, 2001, 66 FR 24270	OAC 3745–50–41; Effective February 16, 2009.
NESHAPS: Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Interim Standards Rule); Checklist 197.	February 13, 2002, 67 FR 6792	OAC 3745–50–44; 3745–50–66; 3745–50–235; 3745–57–40; 3745–266–100; Effective February 16, 2009.
NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule; Checklist 198.	February 14, 2002, 67 FR 6968	OAC 3745–50–51; 3745–266–100; Effective December 7, 2004.
Hazardous Waste Management System; Definition of Solid Waste; Toxicity Characteristic; Checklist 199.	March 13, 2002, 67 FR 11251	OAC 3745–51–02; 3745–51–04; 3745–51–24; Effective December 7, 2004.
NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Corrections; Checklist 202.	December 19, 2002, 67 FR 77687	OAC 3745–50–44(C)(7); 3745–50–44(C)(9); 3745–50–62; 3745–50–66; Effective February 16, 2009.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Checklist 203.	July 30, 2003, 68 FR 44659	OAC 3745–51–05; 3745–279–10; 3745–279–74; Effective February 16, 2009.
Hazardous Waste—Nonwastewaters From Production of Dyes, Pigments, and Food, Drug and Cosmetic Colorants; Mass Loadings-Based Listing; Final Rule; Checklist 206.	February 24, 2005, 70 FR 9138	OAC 3745–51–04; 3745–51–11; 3745–51–30; 3745–51–32; 3745–270–20; 3745–270–40; Effective February 16, 2009.
Hazardous Waste—Nonwastewaters From Production of Dyes, Pigments, and Food, Drug and Cosmetic Colorants; Mass Loadings-Based Listing; Correction; Checklist 206.1.	June 16, 2005, 70 FR 35032	OAC 3745–51–32; Effective February 16, 2009.
Hazardous Waste Management System, Modification of the Hazardous Waste Manifest System; Final Rule; Checklist 207.	March 4, 2005, 70 FR 10776	OAC 3745–50–10; 3745–51–07; 3745–52–20; 3745.52–21; 3745–52–27; 3745–52–32; 3745–52–33; 3745–52–34; 3745–52–45; 3745–52–60; 3745–53–20; 3745–53–21; 3745–54–70; 3745–54–71; 3745–54–72; 3745–54–76; 3745–65–70; 3745–65–71; 3745–65–72; 3745–65–76; Effective February 16, 2009.
Hazardous Waste Management System, Modification of the Hazardous Waste Manifest System; Correction; Checklist 207.1.	June 16, 2005, 70 FR 35034	OAC 3745–52–20; 3745–52–33; Effective February 16, 2009.

OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement *(include checklist number, if relevant)*	**Federal Register** date and page *(and/or RCRA statutory authority)*	Analogous State authority
Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW–846 Final Update IIIB; Checklist 208.	June 14, 2005, 70 FR 34538	OAC 3745–50–11; 3745–50–44(C)(7); 3745–50–44(C)(9); 3745–50–62; 3745–50–66; 3745–51–03; 3745–51–20; 3745–51–21; 3745–51–22; 3745–51–35; 3745–51–38; 3745–55–90; 3745–57–14; 3745–66–90; 3745–68–14; 3745–266–100; 3745–266–102; 3745–266–103; 3745–266–106; 3745–266–112; 3745–270–40; 3745–270–48; 3745–279–10; 3745–279–44; 3745–279–53; 3745–279–63; Effective February 16, 2009.
Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW–846 Final Update IIIB; Correction; Checklist 208.1.	August 1, 2005, 70 FR 44150	OAC 3745–54–98; Effective February 16, 2009.
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures ("Headworks Exemptions"); Checklist 211.	October 4, 2005, 70 FR 57769	OAC 3745–51–03; Effective February 16, 2009.
National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II); Checklist 212.	October 12, 2005, 70 FR 59402	OAC 3745–50–10; 3745–50–11; 3745–50–44(C)(7); 3745–50–44(C)(9, 10, 11); 3745–50–51; 3745–50–62; 3745–50–66; 3745–50–235; 3745–57–40; 3745–68–40; 3745–266–100; Effective February 16, 2009.
Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; Checklist 214.	July 14, 2006, 71 FR 40254	OAC 3745–50–27; 3745–50–28; 3745–50–40; 3745–50–41; 3745–50–42; 3745–50–43; 3745–50–44; 3745–50–45; 3745–50–50; 3745–50–51; 3745–51–02; 3745–51–03; 3745–51–04; 3745–51–06; 3745–51–11; 3745–51–21; 3745–51–24; 3745–51–30; 3745–51–31; 3745–51–32; 3745–51–33; 3745–51–38; 3745–52–34; 3745–52–53; 3745–52–56; 3745–52–58; 3745–52–70; 3745–52–81; 3745–52–82; 3745–52–83; 3745–52–84; 3745–52–87; 3745–54–01; 3745–54–13; 3745–54–17; 3745–54–18; 3745–54–73; 3745–54–97; 3745–54–98; 3745–54–99; 3745–54–101; 3745–55–11; 3745–55–12; 3745–55–15; 3745–55–16; 3745–55–18; 3745–55–19; 3745–55–40; 3745–55–42; 3745–55–43; 3745–55–45; 3745–55–47; 3745–55–51; 3745–55–75; 3745–55–93; 3745–56–21; 3745–56–23; 3745–56–26; 3745–56–51; 3745–56–52; 3745–56–59; 3745–56–80; 3745–56–83; 3745–57–03; 3745–57–04; 3745–57–06; 3745–57–14; 3745–57–17; 3745–57–44; 3745–57–72; 3745–57–73; 3745–57–74; 3745–57–75; 3745–57–83; 3745–57–90; 3745–57–91; 3745–205–101; 3745–65–01; 3745–65–12; 3745–65–14; 3745–65–16; 3745–65–19; 3745–65–56; 3745–65–73; 3745–65–90; 3745–66–10; 3745–66–12; 3745–66–13; 3745–66–17; 3745–66–19; 3745–66–40; 3745–66–42; 3745–66–45; 3745–66–47; 3745–66–74; 3745–66–93; 3745–66–94; 3745–66–97; 3745–66–99; 3745–66–101; 3745–67–21; 3745–67–24; 3745–67–28; 3745–67–29; 3745–67–55; 3745–67–59; 3745–67–80; 3745–67–81; 3745–68–02; 3745–68–03; 3745–68–05; 3745–68–12; 3745–68–14; 3745–68–16; 3745–69–05; 3745–69–41; 3745–69–43; 3745–69–45; 3745–256–100; 3745–256–101; 3745–266–70; 3745–266–80; 3745–266–100; 3745–266–102; 3745–266–103; 3745–266–106; 3745–266–107; 3745–266–109; 3745–266–112; 3745–270–02; 3745–270–04; 3745–270–06; 3745–270–07; 3745–270–40; 3745–270–42; 3745–270–44; 3745–270–45; 3745–270–48; 3745–270–49; 3745–270–50; 3745–273–09; 3745–273–13; 3745–273–14; 3745–273–34; 3745–279–01; 3745–279–10; 3745–279–11; 3745–279–43; 3745–279–44; 3745–279–45; 3745–279–52; 3745–279–55; 3745–279–56; 3745–279–57; 3745–279–59; 3745–279–63; 3745–279–64; 3745–279–70; Effective February 16, 2009.

TABLE 2—EQUIVALENT STATE INITIATED CHANGES

Ohio amendment	Description of change	Sections affected and effective date
Rule Review per 119.032 ...	.....	OAC 3745–50–31; 3745–50–47; 3745–54–56; 3745–54–77 Effective May 13, 2007.
Housekeeping Rules Set I ..	.....	OAC 3745–50–10; 3745–50–11; 3745–50–40 3745–50–51; 3745–50–235; 3745–51–03; 3745–51–04; 3745–51–05; 3745–51–20; 3745–51–22; 3745–51–24; 3745–51–30; 3745–51–35; 3745–51–38; 3745–52–10; 3745–52–21; 3745–52–27; 3745–52–32; 3745–52–33; 3745–52–34; 3745–52–41; 3745–52–54; 3745–53–20; 3745–53–21; 3745–54–18; 3745–54–71; 3745–54–72; 3745–54–98; 3745–55–47; 3745–55–90; 3745–55–99; 3745–57–14; 3745–57–83; 3745–57–91; 3745–65–72; 3745–66–41; 3745–66–90; 3745–67–73; 3745–68–14; 3745–68–40; 3745–256–100; 3745–266–80; 3745–266–103; 3745–266–106; 3745–270–01; 3745–270–40; 3745–270–48; 3745–279–44; 3745–279–53; 3745–279–55; 3745–279–63 Effective February 16, 2009.

G. Which revised State rules are different from the Federal rules?

Ohio has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements. In this action, because Ohio has not received statutory authority for Subparts AA, BB and CC of 40 CFR part 264, they have not adopted the rules for the 40 CFR subpart BB portion in checklist 212 (located in the table above). This will be added at a later date. Checklist 214 in the above table appeared in the **Federal Register** on July 14, 2006 (71 FR 40254) as a Federal regulation that corrected numerous errors that had appeared in the *Code of Federal Regulations* over several years. Not all of the amendments in the July 14 **Federal Register** are reflected in this Ohio rules effective date or in the current Authorization Revision Application. Since the July 14 **Federal Register** includes several hundred amendments, it was broken into several rule-makings in Ohio. This is the first of these rule-makings. Subsequent rule-makings will address the balance of the corrections. A number of these Federal corrections had already been made in the State rules, so not all the Federal changes made in the July 14 FR resulted or will result in Ohio rule amendments attributable to the July 14 FR. Ohio has corrected the errors in the sections cited in Checklist 214 above, additional corrections will be noted in future **Federal Registers** as State Initiated Changes to Checklist 214.

H. Who handles permits after the authorization takes effect?

Ohio will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized.

I. How does today's action affect Indian Country (18 U.S.C. 1151) in Ohio?

Ohio is not authorized to carry out its hazardous waste program in ''Indian Country,'' as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Ohio;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, EPA retains the authority to implement and administer the RCRA program in Indian Country.

J. What is codification and is EPA codifying Ohio's Hazardous Waste Program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Ohio's rules, up to and including those revised June 7, 1991, as corrected August 19, 1991, have previously been codified through the incorporation-by-reference effective February 4, 1992 (57 FR 4162) . We reserve the amendment of 40 CFR part 272, subpart KK for the codification of Ohio's program changes until a later date.

K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**, Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

The Office of Management and Budget has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821 January 21, 2011).

2. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. Regulatory Flexibility Act

This rule authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by State law. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

4. Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.,* substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.,* substantial direct effects on one or more Indian tribes, or 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).

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

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

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

13. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication 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 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 28, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–23553 Filed 9–13–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 493

Office of the Secretary

45 CFR Part 164

[CMS–2319–P]

RIN 0938–AQ38

CLIA Program and HIPAA Privacy Rule; Patients' Access to Test Reports

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS; Centers for Disease Control and Prevention (CDC), HHS; Office for Civil Rights (OCR), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Clinical Laboratory Improvement Amendments of 1988 (CLIA) regulations to specify that, upon a patient's request, the laboratory may provide access to completed test reports that, using the laboratory's authentication process, can be identified as belonging to that patient. Subject to conforming amendments, the proposed rule would retain the existing provisions that provide for release of test reports to authorized persons and, if applicable, the individuals (or their personal representative) responsible for using the test reports and, in the case of reference laboratories, the laboratory that initially requested the test. In addition, this proposed rule would also amend the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule to provide individuals the right to receive their test reports directly from laboratories by removing the exceptions for CLIA-certified laboratories and CLIA-exempt laboratories from the provision that provides individuals with the right of access to their protected health information.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 14, 2011.

ADDRESSES: In commenting, please refer to file code CMS–2319–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation

to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2319–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2319–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *For CLIA regulations:*

Nancy Anderson, CDC, (404) 498–2280.
Judith Yost, CMS, (410) 786–3531.

For HIPAA Privacy Rule:

Andra Wicks, OCR, (202) 205–2292.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. CLIA Statute and Regulations

The Clinical Laboratory Improvement Amendments of 1988 (CLIA) were enacted to establish quality standards for certain laboratory testing. These standards ensure the accuracy, reliability and timeliness of patient test results, regardless of where the test is performed. The standards are based on the complexity of the laboratory test method; the more complicated the test, the more stringent the requirements for the laboratory.

CLIA established three categories of testing based on complexity level. In increasing order of complexity, these categories are waived complexity, moderate complexity which includes the subcategory of provider-performed microscopy (PPM), and high complexity. Laboratories must hold a CLIA certificate for the most complex form of CLIA-regulated testing that they perform.

CLIA covers all phases of laboratory testing, including the reporting out of test results. The CLIA-based limitations that govern to whom a laboratory may issue a test report have become a point of concern. The requirements for a laboratory test report are set forth in 42 CFR 493.1291.

Under the current regulations at § 493.1291(f), CLIA limits a laboratory's disclosure of laboratory test results to three categories of individuals: the ''authorized person,'' the person responsible for using the test results in the treatment context, and, in the case of reference laboratories, the referring lab. Authorized person is defined in § 493.2 as the individual authorized under State law to order or receive test results, or both. In States that do not provide for individual access to the individual's test results, the individual must receive his or her results through the ordering provider.

While individuals can obtain test results through the ordering provider, we believe that the advent of certain health reform concepts (for example, individualized medicine and an individual's active involvement in his or her own health care) would be best served by revisiting the CLIA limitations on the disclosure of laboratory test results.

Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (The Recovery Act), which was enacted on February 17, 2009, incorporated the Health Information Technology for Economic and Clinical Health (HITECH) Act.

HITECH created a Federal advisory committee known as the Health Information Technology (HIT) Policy Committee. The HIT Policy Committee has broad representation from major health care constituencies and provides recommendations to the Office of the National Coordinator for Health Information Technology (ONC) on issues relating to the implementation of an interoperable, nationwide health information infrastructure. Among other efforts, the HIT Policy Committee has sought to identify barriers to the adoption and use of health information technology. According to the HIT Policy Committee, CLIA regulations are perceived by some stakeholders as imposing barriers to the exchange of health information. These stakeholders include large- and medium-sized laboratories, some public health laboratories, electronic health record (EHR) system vendors, health policy experts, health information exchange organizations (HIOs) and healthcare providers who believe that the individual's access to his or her own records is impeded, preventing patients from a more active role in their personal health care decisions.

CLIA staff worked with the Office of the National Coordinator for Health IT (ONC), and the CMS Office of E–Health Standards and Services (OESS) to

ensure an individual's direct access to his or her own medical records through laboratories.

The collaborating offices believe the provision of direct patient access to laboratory test reports would support the commitments and goals of the Secretary of HHS and the CMS Administrator regarding the widespread adoption of EHRs by 2014.

Therefore, in an effort to increase direct patient access rights, we are proposing that, upon a patient's request, CLIA regulations would allow laboratories to provide direct patient access to completed test reports that, using the laboratory's authentication processes, the laboratory can identify as belonging to that patient. We propose to retain the other categories of individuals who are eligible to receive test reports from laboratories, namely the individuals responsible for using the test reports, and, in the case of a reference laboratory, the laboratory that initially requested the test. We also propose certain conforming amendments to the existing regulations. CMS solicits comments from stakeholders regarding the potential impact of this change on improving patients' access to their laboratory results.

B. HIPAA Statute and Privacy Rule

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Title II, subtitle F—Administrative Simplification, Public Law 104–191, 110 Stat., 2021, provided for the establishment of national standards to protect the privacy and security of personal health information. The Administrative Simplification provisions of HIPAA apply to three types of entities, which are known as ''covered entities'': health care providers who conduct covered health care transactions electronically, health plans, and health care clearinghouses.

A laboratory, as a health care provider, is only a covered entity if it conducts electronic transactions (for example, electronic submission of health care claims). The list of HIPAA transactions applicable to providers are:

- Health care claims or equivalent encounter information.
- Coordination of benefits.
- Health care claim status.
- Eligibility for a health plan.
- Referral certification and authorization.

If a laboratory does not conduct any of the above transactions electronically (either because it does not conduct the transactions at all or because it does so via paper), then it is not subject to the HIPAA Privacy Rule. If a laboratory conducts a single transaction electronically, then it becomes a covered entity and is subject to the Privacy Rule with respect to all protected health information that it creates or maintains (that is, the application of the Privacy Rule is not limited to the individuals or records associated with an electronic transaction).

Pursuant to HIPAA, on December 28, 2000, the Department published a final rule in the **Federal Register** (65 FR 82462) entitled ''Standards for Privacy of Individually Identifiable Health Information, known as the ''Privacy Rule,'' which was amended on August 14, 2002 (67 FR 53182). The Privacy Rule at 45 CFR 164.524 provides individuals with a general right of access to inspect and obtain a copy of protected health information about the individual in a designated record set maintained by or for a covered entity. A ''designated record set'' is defined at § 164.501 as a group of records maintained by or for a covered entity that is comprised of the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or used, in whole or in part, by or for the covered entity to make decisions about individuals.

The definition of ''designated record set'' also clarifies that the term ''record'' means ''any item, collection, or grouping of information that includes protected health information and is maintained, collected, used or disseminated by or for a covered entity.'' Laboratory test reports maintained by or for a laboratory that is a covered entity fall within the definition of designated record set since they are medical records about individuals.

The right of access under § 164.524 extends not only to individuals, but also to individuals' personal representatives. The rules governing who may act as a personal representative under the Privacy Rule are set forth at § 164.502(g).

While individuals (and personal representatives) generally have the right to inspect and obtain a copy of their protected health information in a designated record set, the Privacy Rule includes a set of exceptions related to CLIA. The right of access under § 164.524 of the Privacy Rule does not apply to: protected health information maintained by a covered entity that is—(1) Subject to CLIA to the extent the provision of access to the individual would be prohibited by law; or (2) exempt from CLIA.

These exceptions at § 164.524(a)(1)(iii) were included in the Privacy Rule because the Department wanted to avoid a conflict with the CLIA requirements that limited patient access to test reports (65 FR 82485). These exceptions only cover test reports at CLIA and CLIA-exempt laboratories; the individual has a right to access the test reports when held by any other type of covered entity (for example, a hospital or treating physician).

Because CMS is proposing to amend the CLIA regulations to allow CLIA-certified laboratories to provide patients with direct access to their test reports, there is no longer a need for the exceptions at § 164.524 for CLIA and CLIA-exempt laboratories. Unless these exceptions are removed from the Privacy Rule, they would serve as a barrier to individuals' right of access to test reports. Failure to eliminate these barriers would be inconsistent with the CMS proposal and the goals of HHS to improve individuals' electronic access to their health information and have widespread adoption of EHRs by 2014. Accordingly, HHS is proposing to remove the exceptions for CLIA and CLIA-exempt laboratories from the right of access at § 164.524.

II. Provisions of the Proposed Regulations

A. Proposed Changes to the CLIA Regulations (42 CFR 493.1291)

This rule proposes revisions to § 493.1291 to provide patients, upon request, with direct access to their laboratory test reports. To do so we are proposing to add § 493.1291(l) to specify that, upon a patient's request, the laboratory may provide an individual with access to his or her completed test reports that, using the laboratory's authentication processes, can be identified as belonging to that patient. In using ''may,'' however, we would highlight the importance of reading the proposed CLIA provisions in concert with the applicable HIPAA provisions. As described in section IIB below, HIPAA generally requires covered entities to give patients access to their records. One exception to this general mandate is a provision that exempts entities subject to CLIA where a law bars disclosure. If finalized, the proposed HIPAA amendments will remove this exception, and covered entity laboratories will be required to provide patients with access to test reports. While a more detailed HIPAA preemption analysis is found in section IIB below, we note that the CLIA ''may''

plus the HIPAA ''must'' would result in a ''must disclose'' for laboratories that are HIPAA covered entities.

We also note that, as proposed, the CLIA regulations would not spell out the mechanism by which patient requests for access would be submitted, processed, or responded to by the laboratories. In providing this latitude, we intend to allow patients and their personal representatives' access to patient test reports in accordance with the requirements of the HIPAA Privacy Rule.

Subject to conforming amendments, we propose to retain the existing requirements at § 493.1291(f) that otherwise limit the release of test reports to authorized persons and, if applicable, the individuals (or their personal representatives) responsible for using the test reports and, in the case of a reference laboratory, the laboratory that initially requested the test.

B. Proposed Changes to the Privacy Rule (45 CFR 164.524)

The Department also proposes to amend the Privacy Rule at § 164.524 to remove the exceptions that relate to CLIA and affect an individual's right of access. This proposal would align the Privacy Rule with CMS' proposed changes and the Department's goal of improving individuals' access to their health information.

As a result of this proposal, HIPAA covered entities that are laboratories subject to CLIA would have the same obligations as other types of covered health care providers with respect to providing individuals with access to their protected health information in accordance with § 164.524. Similarly, HIPAA covered entities that are CLIA-exempt laboratories (as the term is defined at 42 CFR 493.2) would no longer be excepted from HIPAA's right of access under § 164.524(a)(1)(iii)(B). As with other covered entities, HIPAA covered laboratories would be required to provide access to the individual or the individual's personal representative.

The current HIPAA Privacy Rule requires covered entities to provide an individual with access to protected health information in the form or format requested by the individual, if it is readily producible in such form or format. The Privacy Rule permits covered entities to charge a reasonable, cost-based fee to provide individuals with copies of their protected health information. The fee may include only the cost of copying (including supplies and labor) and postage, if the patient requests that the copy be mailed. If the patient has agreed to receive a summary or explanation of his or her protected health information, the covered entity may also charge a fee for preparation of the summary or explanation. The fee may not include costs associated with searching for and retrieving the requested information.

On July 14, 2010, the Department issued a proposed rule to implement most of the privacy and security provisions of the HITECH Act, which included provisions to strengthen an individual's right to receive an electronic copy of his or her protected health information, where such information is maintained electronically in one or more designated record sets. Specifically, the proposed rule would require in such cases that the covered entity provide the individual with access to the electronic information in the electronic form and format requested by the individual, if it is readily producible in such form and format, or, if not, in a readable electronic form and format as agreed to by the covered entity and the individual. Additionally, the Department proposed changes to address and clarify the fees associated with the provision of electronic access. The Department proposed to allow reasonable cost-based fees reflecting the costs of labor for creating the electronic copy of the information and of supplies, such as CDs, if the individual requests that the electronic copy be provided on portable media. HIPAA covered laboratories would be required to comply with the Privacy Rule's provisions regarding form of access provided and fees, as they exist currently and then are ultimately modified by a final rule implementing the HITECH Act. With respect to the provision of electronic access, covered entities that have electronic reporting capabilities are expected to provide the individual with a machine readable or other electronic copy of the individual's protected health information. (The individual always retains the right to request and receive a paper copy, if desired.) The Department considers machine readable data to mean digital information stored in a standard format enabling the information to be processed and analyzed by computer. For example, this would include providing the individual with an electronic copy of the protected health information in the format of MS Word or Excel, text, HTML, or text-based PDF, among other formats. We request comment on the ability of laboratories to provide electronic copies of protected health information in machine readable or other electronic formats.

Under our proposal, § 164.524 would preempt any contrary provisions of State law. HIPAA, at section 1178 of the Social Security Act (the Act), provides that the administrative simplification regulations (''the HIPAA Rules'') preempt any contrary provisions of State law. A provision of State law is ''contrary'' to a provision of the HIPAA Rules if a covered entity would find it impossible to comply with both the State and Federal requirements; or the provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of part C of title XI of the Act or section 254 of Public Law 104–191, as applicable.

Pursuant to section 264(c)(2) of HIPAA, the HIPAA Privacy Rule includes an exception from this general preemption if ''the provision of State law relates to the privacy of individually identifiable health information and is more stringent than a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter.'' With respect to a State law pertaining to an individual's right to access his or her protected health information, a State law is more stringent than the Privacy Rule if the State law ''permits greater rights of access or amendment, as applicable'' (§ 160.202).

A number of States have laws that prohibit a laboratory from releasing a test report directly to the patient or that prohibit the release without the ordering provider's consent. If adopted, the proposed changes to § 164.524 would preempt any contrary State laws that prohibit the HIPAA-covered laboratory from directly providing access to the individual.

We note that covered entities, including CLIA and CLIA-exempt laboratories under our proposal, must satisfy the verification requirement of § 164.514(h) before providing an individual with access. This requirement is consistent with the proposed change to the CLIA requirements, which would allow a laboratory to provide patients with access to test reports when the laboratory can authenticate that the test report pertains to the patient. We recognize that a laboratory may receive a test order with only an anonymous identifier and thus may be unable to identify the individual who is the subject of the test report. It is not our intent to discourage such anonymous testing. In this case, the laboratory that receives a request for access from an individual but cannot verify that the requesting individual is the subject of a test report is under no obligation to provide access.

We propose that, if finalized, HIPAA-covered laboratories would be required to comply with the revised § 164.524 by no later than 180 days after the effective date of the final rule. The effective date of the final rule would be 60 days after publication in the **Federal Register**, so laboratories would have a total of 240 days after publication of the final rule to come into compliance. This compliance period is consistent with section 1175(b)(2) of the Act, which provides that the Department must provide covered entities with at least 180 days to come into compliance with modifications to standards under the HIPAA Rules. This compliance period also is consistent with our proposed changes to § 160.105 found in the July 14, 2010 proposed rule (75 FR 40868). That proposal would establish at § 160.105 a 180-day compliance period for future modifications to the HIPAA Rules, unless otherwise specifically provided.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the information collection requirements (ICRs) in the proposals for 42 CFR 493.1291.

Except as provided in § 493.1291(l), test reports must be released only to authorized persons and, if applicable, the individuals (or their personal representative) responsible for using the test reports and, in the case of a reference laboratory, the laboratory that initially requested the test. Under § 493.1291(l), the laboratory may, upon request by the patient, provide access to the patient's test reports that the laboratory can identify as belonging to that patient. The CLIA regulations would not require that CLIA-certified laboratories provide this access—rather, the entities would be allowed to provide for access. We note, however, that CLIA-certified laboratories generally are covered entities under the HIPAA Privacy Rule. That rule also provides for patients' access to their records. CLIA-certified laboratories will need to ensure that their practices conform to CLIA and HIPAA requirements.

We have prepared the Paperwork Reduction Act and the Regulatory Impact Analysis that represents the costs and benefits of the proposed rule based on analysis of identified variables and data sources needed for this proposed change. We identified known data elements (Table 1) and made assumptions on elements where a source could not be identified (Table 2). Our assumptions are based on internal discussions and consultation with two reference laboratories. We request comments on the assumptions used and analyses provided.

TABLE 1—SUMMARY OF KNOWN DATA ELEMENTS

Variable	Data element	Source
States/territories where HIPAA will pre-empt State Law.[1]	20	Determination of this finding is based on two reports as listed here: 1. *Privacy and Security Solutions for Interoperable Health Information Exchange, Releasing Clinical Laboratory Test Results; Report on Survey of State Laws* prepared by Joy Pritts, JD, for the Agency for Healthcare Research and Quality and Office of the National Coordinator August 2009; RIT Project Number 0209825.000.015.100 (accessed July 15, 2010). 2. *Electronic Release of Clinical Laboratory Results:* A Review of State and Federal Policy prepared by Kitty Purington, JD, for the California Healthcare Foundations January 2010 (Accessed July 15, 2010).[1])
States/territories where laboratories are impacted.	39	Determination of this finding is based on two reports as listed here: 1. *Privacy and Security Solutions for Interoperable Health Information Exchange, Releasing Clinical Laboratory Test Results; Report on Survey of State Laws* prepared by Joy Pritts, JD, for the Agency for Healthcare Research and Quality and Office of the National Coordinator August 2009; RIT Project Number 0209825.000.015.100 (Accessed July 15, 2010). 2. *Electronic Release of Clinical Laboratory Results: A Review of State and Federal Policy* prepared by Kitty Purington, JD, for the California Healthcare Foundations January 2010 Accessed July 15, 2010).
Laboratories impacted	22,671	Data from CLIA Online Survey Certification and Reporting database (OSCAR) database accessed July 8, 2010.
Test results in impacted laboratories.	6,108,678,992	Data from OSCAR database accessed July 8, 2010.
Hourly salary of clerical level employee to process test request.	$30.09	2011 salary/wages and benefits—use 2010 salary/wages and benefits of $29.25 obtained from the U.S. Bureau of Labor Statistics, Economic News Release, March 2010 *U.S.—Total employer costs per hour worked for employee compensation: Civilian workers; Occupational Group: Service-providing at (http://www.bls.gov/news.release/ecec.t01.htm) and adjusts annually by 2.78 percent* to reflect an average increase in total compensation costs from 2005–2009.
Hourly salary of management level employee to determine policy.	$50.06	2011 salary/wages and benefits—use 2010 salary/wages and benefits of $48.66 obtained from the U.S. Bureau of Labor Statistics, Economic News Release, March 2010 *U.S.—Total employer costs per hour worked for employee compensation: Civilian workers; Occupational Group: Service-providing at (http://www.bls.gov/news.release/ecec.t01.htm) and adjusts annually by 2.78 percent* to reflect an l average increase in total compensation costs from 2005–2009.

[1] Note that there may be circumstances where a laboratory is able to comply with both HIPAA and the State law.

TABLE 2—SUMMARY OF ASSUMPTIONS

Variable	Low	High
Number of test results per test report	10 test results	20 test results.
Percentage of patients requesting test report	0.05%	0.50%.
Time required to process request for test report	10 minutes	30 minutes.

We determined that the impacted CLIA-certified laboratories can be broken down into four categories: laboratories in States and territories where there is no law regarding who can receive test reports (N = 26), laboratories in States and territories where test reports can only be given to the provider (N = 13), laboratories in States and territories that allow test reports to go directly to the patient through some means or mechanism (N = 9), and laboratories in States and territories that allow the test reports to go to the patient with provider approval (N = 7) (see Table 3 for a list of states and territories by category). Of these four categories, we believe that laboratories in the 39 States and territories where there is either no law regarding receipt of test reports or where reports can only go to the provider would be affected by the proposals contained in this rulemaking. Laboratories in the remaining categories would most likely have existing procedures in place to respond to patient requests for test reports, whereas the laboratories in the first two categories would most likely not have procedures in place and would have to develop mechanisms for handling these requests and providing access.

TABLE 3—IMPACT OF PROPOSED RULE CHANGE ON LABORATORIES

Impacts laboratories		Does not impact laboratories	
No State law	Allows test reports only to provider	Allows test reports to patient	Allows test reports to patient with provider approval
Alabama	Arkansas	Delaware	California
Alaska	Georgia	District of Columbia	Connecticut
Arizona	Hawaii	Maryland	Florida
Colorado	Illinois	New Hampshire	Massachusetts
Guam	Kansas	New Jersey	Michigan
Idaho	Maine	Nevada	New York
Indiana	Missouri	Oregon	Virginia
Iowa	Pennsylvania	Puerto Rico	
Kentucky	Rhode Island	West Virginia	
Louisiana	Tennessee		
Minnesota	Washington		
Mississippi	Wisconsin		
Montana	Wyoming		
Nebraska			
New Mexico			
North Carolina			
North Dakota			
N. Mariana Islands			
Ohio			
Oklahoma			
South Carolina			
South Dakota			
Texas			
Utah			
Vermont			
Virgin Islands			

The CMS Online Survey, Certification, and Reporting (OSCAR) database indicates that there are a total of 22,671 laboratories which provide approximately 6.1 billion tests annually (see Table 4) in the 39 States and territories impacted by this rule. We assume Certificate of Waiver laboratories and Certificate of PPM laboratories would not be impacted because the tests are usually performed in these sites during a patient's visit. We assume that the physician or health practitioner would inform the patient of those results during the visit, and we anticipate that the patient would ask that person with whom they interacted as opposed to the laboratory, if they have reason to seek copies of the test report in the future. We request public comments on the potential impact of this rule on Certificate of Waiver and Certificate of PPM laboratories.

If the proposals contained in this rule are finalized, most of these 22,671 laboratories will need to develop processes and procedures to provide direct patient access to test reports. However, we recognize that some of these 22,671 laboratories may not be covered entities under HIPAA (because they do not conduct covered health care transactions electronically, for example, filing electronic claims for payment) and therefore would not be required to provide direct patient access. We do not have information on the number of laboratories that are not covered entities under HIPAA and invite comment on this issue.

TABLE 4—NUMBER OF IMPACTED LABORATORIES AND TESTS PER YEAR IN THE 39 AFFECTED STATES AND TERRITORIES

State	Number of laboratories	Number of tests
Alabama	851	243,512,093
Alaska	95	8,456,680
Arizona	563	194,894,073
Arkansas	513	66,845,370
Colorado	498	125,645,501
Georgia	1,172	194,786,593
Guam	12	2,055,709
Hawaii	124	32,566,029
Idaho	231	25,623,535
Iowa	536	75,797,879
Illinois	1,077	497,900,106
Indiana	640	172,798,521
Kansas	442	239,488,953
Kentucky	697	110,373,950
Louisiana	666	119,794,280
Maine	138	32,909,637
Minnesota	831	145,496,862
Missouri	665	163,380,564
N. Mariana Isl.	3	88,177
Mississippi	617	74,187,598
Montana	157	24,428,257
N. Carolina	1,424	288,449,078
N. Dakota	139	19,783,502
Nebraska	372	64,790,081
New Mexico	190	42,105,436
Ohio	1,112	345,544,798
Oklahoma	531	108,564,207
Pennsylvania	1,095	487,529,546
Rhode Island	110	35,429,909
S. Carolina	709	92,320,737
S. Dakota	211	664,345,948
Tennessee	1,070	219,535,503
Texas	3,211	783,048,259
Utah	315	61,663,359
Vermont	81	9,894,769
Virgin Islands	12	1,902,023
Washington	727	176,535,389
Wisconsin	748	146,846,804
Wyoming	86	9,359,277
Totals	22,671	6,108,678,992

Data from the CLIA OSCAR database accessed on 7/8/2010.
The ''Number of tests'' is self reported by the laboratory without validation.
Includes only moderate and high complexity laboratories issued a CLIA Certificate of Registration, Certificate of Compliance, or Certificate of Accreditation.

We assume that the development of the mechanisms to provide patient access to laboratory test reports would be a one-time burden and that each laboratory would develop its own unique policies and procedures to address patient access or adopt mechanisms/procedures developed by consultants or associations representing laboratories. We assume a one-time burden of 2–9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient requests for access to test reports. While we provide a range of burden estimates in this proposed rule, for purposes of OMB review and approval we will submit burden estimates based on 9 hours. We also assume an hourly rate for a management level employee to be $50.06 (see Table 1).

The range of costs for laboratories to develop the necessary processes and procedures for handling patient requests would be:

2 hours × $50.06 per hour = $100.12 per laboratory × 22, 671 laboratories = $2,269,821

9 hours × $50.06 per hour = $450.54 per laboratory × 22, 671 laboratories = $10,214,192

The burden associated with responding to test report requests is dependent upon the total number of test reports that exist in affected laboratories, the percent of the results that would be requested and the cost of producing these reports for those individuals who ask for direct access.

Laboratory test reports are commonly understood to contain multiple test results with many laboratory tests being ordered as panels of tests. Each laboratory may have their own unique test report panels which may contain anywhere from 1 to 20 individual test results.

Using a range of 10 to 20 test results in a test report, we estimated the annual number of test reports that may be requested to be:

6,108,678,992 tests per year/20 tests per report = 305,433,950 test reports/year

6,108,678,992 tests per year/10 tests per report = 610,867,899 test reports/year

We are unaware of any data that would provide a reasonable estimate for the number of patients who would

request test reports from laboratories if they are available. We are soliciting public comments in order to better estimate the number of patient requests a laboratory might receive. We assume a range of 1 in 2,000 patients (0.05%) to 1 in 200 patients (0.50%) would request direct access to his or her test report.

Using these figures the range of the number of patient requests per year would be:

305,433,950 test reports per year × .0005 = 152,717 patient requests per year

610,867,899 test reports per year × .005 = 3,054,339 patient requests per year

The processing of a patient request for a test report generally covers steps from actual receipt of the patient's request to the delivery of the report and documentation of the delivery. Requests for laboratory results are usually handled by staff that is not management level. Due to the lack of data that indicates the amount of time it takes for staff to process a test report request, we assume a range of 10 to 30 minutes to handle a request from start to finish. We also assume an hourly rate for a clerical level employee to be $30.09 (see Table 1)).

Using these figures, we calculated the range of costs to produce one test report:

$30.09 per hour/60 minutes per hour = $0.50/minute

$0.50 per minute × 10 minutes = $5.00

$.50 per minute × 30 minutes = $15.00

We then multiplied this range by the range of the anticipated number of patient requests to obtain a range of costs to provide the patient requests per year:

152,717 patient requests per year × $5.00 = $763,585

3,054,339 patient request per year × $15.00 = $45,815,092

We then added the cost to develop the processes and procedures for handling patient requests to the cost to provide the test reports to obtain the range of the total costs to laboratories to provide patients with his or her test report upon request in 2011:

$2,269,821 cost to develop process + $763,585 cost to provide test reports = $3,033,405

$10,214,192 cost to develop process + $45,815,092 cost to provide test reports = $56,029,285 annual cost (undiscounted 2010 dollars)

TABLE 5—ESTIMATED ANNUAL RECORDKEEPING AND REPORTING BURDEN

Regulation section(s)	OMB Control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/ maintenance costs ($)	Total cost ($)
42 CFR 493.1291	0938–New	22,671	22,671	9	204,039	50.06	10,214,192	0	10,214,192
45 CFR 493.1291	0938–New	3,054,339	3,054,339	.5	1,527,170	30.09	45,815,092	0	45,815,092
Total	.....	3,077,010	3,077,010	.....	1,731,209	.....	.....	.....	56,029,285

We have provided an analysis of burden based on available information and certain assumptions. We request comments from laboratories that currently provide direct access to test reports for patients as to how they handle these requests (for example, through a Web portal, fax, hard-copy, with or without fees, etc) and the extent to which patient requests impact business operations. The Department solicits comments additionally on best practices in the direct provision of patients' laboratory results. We also request comment on the burdens associated with providing electronic formats as requested by individuals, machine readable or otherwise.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

If you comment on these information collection and recordkeeping estimates, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* CMS Desk Officer, CMS–2319–P, *Fax:* (202) 395–6974; or *E-mail: OIRA_submission@omb.eop.gov*.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Laboratories regulated under CLIA that do not currently provide patients with an opportunity to receive, upon request, a copy of their laboratory test report (defined in CLIA regulations at § 493.1291) would be affected by this proposed rule. According to CMS OSCAR database accessed on July 8, 2010, there are 214,875 laboratories in the United States that are subject to CLIA. OSCAR is a data network maintained by CMS in cooperation with

the State surveying agencies and accrediting organizations that provides a compilation of all the data elements collected during inspection surveys conducted at laboratories for the purpose of certification for participation in the Medicare and Medicaid programs. Of the total CLIA-certified laboratories identified in the OSCAR database, we believe approximately 192,204, or 90 percent, of these would not be impacted by this change because they perform testing either under a Certificate of Waiver or Certificate of Provider Performed Microscopy (PPM) or they are located in States that already allow the laboratory to provide patient access to test reports, either directly or with provider approval. Removing the step in which the provider grants permission to the laboratory should not pose an additional impact on the laboratory, as we believe these laboratories already have processes in place to provide patients access to test reports once that permission is received.

We expect that 22,671 laboratories located in the 39 states and territories identified in Table 3 as having no State law or a State law that provides test reports only to the provider would be impacted by the changes outlines in this proposed rule.

We believe that, if finalized, this proposed rule would not constitute an economically significant rule because we estimate the range of overall annual costs that would be expended by the affected laboratories would be less than $100 million for 2011.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we assume that the great majority of medical laboratories are small entities, either by virtue of being nonprofit organizations or by meeting the SBA definition of a small business by having revenues of less than $13.5 million in any 1 year. We believe at least 83 percent of medical laboratories qualify as small entities based on their nonprofit status as reported in the American Hospital Association Fast Fact Sheet updated June 24, 2010 (*http://www.aha.org/aha/resource-center/Statistics-and-Studies/Fast_Facts_Nov_11_2009.pdf.*)

Other options for regulatory relief of small businesses as discussed in section E of this proposed rule, were determined not to be feasible and therefore these options were not analyzed for this proposed rule. We believe any alternative to allowing the laboratory to provide patient access to test reports would be counterproductive to HHS efforts to provide patient-centered healthcare. We are unaware of any instances in which the changes included in this proposed rule would affect health care entities operated by small government jurisdictions. We are requesting public comments in this area, particularly from laboratories in state health departments (including Newborn screening), prisons, school clinics or state universities that would be impacted, to assist us in making this determination in the final rule.

Section 1102(b) of the Social Security Act also requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We do not expect this proposed rule would have a significant impact on small rural hospitals. The proposed rule would only apply to laboratories. If a small rural hospital were to operate its laboratory such that it would have to adopt means of complying with these proposed provisions, we anticipate that it would require minimal effort to put policies and procedures in place to respond to patient requests to the laboratory as we expect that the cahospital would already have procedures in place for responding to patient access requests for hospital records under the HIPAA Privacy Rule. We believe that these existing policies and procedures should be easy to translate for use in direct access requests to hospital-operated laboratories. Therefore, the Secretary has determined that this proposed rule, if finalized, would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. We do not anticipate this proposed rule would impose an unfunded mandate on states, tribal governments, or the private sector of more than $136 million annually. We request comments from States, tribal governments, and the private sector on this assumption.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirements and costs on state and local governments, preempts State law, or otherwise has Federalism implications.

The proposed changes to the CLIA regulations at § 493.1291 would not have a substantial direct effect on State and local governments, preempt State law, or otherwise have a Federalism implication and there is no change in the distribution of power and responsibilities among the various levels of government. We believe that this change is compatible with existing State law for 35 States and territories as shown in Table 6. Of the 35, we believe that nine already allow the laboratory to release test reports directly to the patient. In 26 States and territories, we believe that the licensing statutes and regulations are silent with respect to who is authorized to receive laboratory test reports. If finalized, the CLIA regulations will allow laboratories in these States and territories to provide, upon a patient's request, direct access to the patient's identifiable test reports.

The Federalism implications of the Privacy Rule were assessed as required by Executive Order 13132 and published as part of the preamble to the final rule on December 28, 2000 (65 FR 82462, 82797). Regarding preemption, though the proposed changes to the Privacy Rule will preempt a number of State laws (see Table 6, below), this preemption of State law is consistent with the preemption provision of the HIPAA statute. The preamble to the final Privacy Rule explains that the HIPAA statute dictates the relationship between State law and Privacy Rule requirements, and the rule's preemption provisions do not raise Federalism issues.

We do not believe that this rule would impose substantial direct compliance costs on State and local governments that are not required by statute. We do not believe that a significant number of laboratories affected by these proposals are operated by State or local governments. Therefore, the proposed modifications in these areas would not cause additional costs to State and local governments.

In considering the principles in and requirements of Executive Order 13132, the Department has determined that this proposed modification to the Privacy Rule will not significantly affect the rights, roles and responsibilities of the States.

TABLE 6—EXISTING LAWS IN STATES/TERRITORIES PERTAINING TO TEST REPORTS

HIPAA will preempt State law		Compatible with State law	
Allows test reports only to provider	Allows test reports to patient with provider approval	Allows test reports to patient	No State law
Arkansas	California	Delaware	Alabama
Georgia	Connecticut	District of Columbia	Alaska
Hawaii	Florida	Maryland	Arizona
Illinois	Massachusetts	New Hampshire	Colorado
Kansas	Michigan	New Jersey	Guam
Maine	New York	Nevada	Idaho
Missouri	Virginia	Oregon	Indiana
Pennsylvania		Puerto Rico	Iowa
Rhode Island		West Virginia	Kentucky
Tennessee			Louisiana
Washington			Minnesota
Wisconsin			Mississippi
Wyoming			Montana
			Nebraska
			New Mexico
			North Carolina
			North Dakota
			N. Mariana Islands
			Ohio
			Oklahoma
			South Carolina
			South Dakota
			Texas
			Utah
			Vermont
			Virgin Islands

B. Anticipated Effects

The current CLIA regulations and related laws of the States and territories pose potential barriers to the laboratory exchange of health care information (test reports) directly with the patient. These proposed regulatory changes would amend § 493.1291(f) and add § 493.1291(l) to the CLIA regulations and also amend § 164.524 of the Privacy Rule. These changes are being made in support of HHS' efforts toward achieving patient-centered and health IT-enabled healthcare and would allow patients direct access to their laboratory test reports from a laboratory without having to go to their healthcare provider to obtain this information.

This proposed rule includes changes that, if finalized, would impact laboratories in 39 States and territories (Table 3) where State law does not permit the laboratory to provide test reports directly to the patient. For the laboratories in the remaining 16 States and territories where the laboratory is allowed to provide the test report to the patient either directly or after provider approval, there is no impact based on this proposed rule.

C. Costs

Although data are not available to calculate the estimated costs and benefits that would result from these proposed regulatory changes, we are providing an analysis of the potential impact based upon available information and certain assumptions. We assume that the costs and benefits of the change to the HIPAA Privacy Rule would not be separate from the costs and benefits associated with the changes to the CLIA regulations. We request comments on how laboratories would handle patient requests for laboratory test reports and the associated costs. These proposed regulatory changes, if finalized, are anticipated to have the following associated costs and benefits:

- The impacted laboratories may require additional resources to process the patient requests for test reports and to provide the test reports to the patients.
- Patients will benefit from having direct access to their laboratory test results. (See section D below).

1. Quantifiable Impacts

We assume that, if this proposed rule is finalized, laboratories that are issued a CLIA Certificate of Registration, Certificate of Compliance, or Certificate of Accreditation in the 39 States and territories identified in Table 3 will be allowed to provide patients with a copy of their test report upon request. The OSCAR database includes 22,671 laboratories in the 39 States and territories that would be impacted by this proposed change and the corresponding number of annual tests in these laboratories is approximately 6.1 billion as shown in Table 4. Data are not available for estimating the number of test results reported per test report. However, it is common knowledge that the majority of test reports contain multiple test results. Tests are frequently ordered as panels of individual tests. For example, according to 2008 CMS reimbursement data, three of the four most frequently ordered tests in the Medicare outpatient setting are panels of multiple individual tests, some of which may contain up to 20 tests. As part of a medical encounter, frequently more than one panel is ordered per patient, and a test report could contain a large number of individual test results. Therefore, for the purposes of this analysis, an assumed range of 10 to 20 is used to represent the average number of test results per test report. Applying this range to the total number of annual tests (6,108,678,992) from Table 4, the estimated number of total annual test reports ranges from a low of 305,433,950 to a high of 610,867,899.

There are no data available to estimate the proportion of test reports that would be requested by patients from the laboratories impacted by these proposed provisions once this rule is finalized. We welcome data pertaining to the number of test reports requested from

laboratories that are already providing test reports upon request so that we would be better able to provide a more accurate estimate in the final rule. For the purposes of this analysis, we assume that many patients would still prefer to obtain their laboratory result information from their healthcare provider, who would also be able to provide interpretation of the test results, and thus an assumed range of from 1 in 2,000 (0.05 percent) to 1 in 200 (0.50 percent) is used to represent the proportion of test reports requested. Applying this range to the number of estimated annual test reports (305,433,950 to 610,867,899) yields an estimated annual number patient requests ranging from 152,717 to 3,054,339.

Processing a request for a test report, either manually or electronically, would require completion of the following steps: (1) Receipt of the request from the patient; (2) authentication of the identification of the patient; (3) retrieval of test reports; (4) verification of how and where the patient wants the test report to be delivered and provision of the report by mail, fax, e-mail or other electronic means; and (5) documentation of test report issuance. We estimated the total time to process each test report request to be in the range of 10 minutes to 30 minutes. This estimate for a range of total time includes estimates for a range of time for each of the five steps listed above. The time needed to complete each step is dependent on the capabilities of the laboratory, such as whether manual or automated processes are available, and the desired method of communication of test reports to the individual patient as listed in step 5. We welcome comments based on data from laboratories that already provide test reports to patients upon request. We also request comment on the burdens associated with providing electronic formats as requested by individuals, machine readable or otherwise.

To determine the cost of processing test reports we used an hourly rate for a clerical level employee of $30.09 (see Table 1) and determined the costs to process one test report to be $5.00 if it took 10 minutes and $15.00 if it took 30 minutes. We multiplied the range for the number of patient requests, 152,717 to 3,054,339 by $5.00 and $15.00. The estimated annual cost to process all test report requests in 2011 ranges from $763,585 to $45,815,092.

The analysis also assumed each of the estimated 22,671 laboratories to be impacted by this rule (Table 3) would need to develop and implement a policy and process to receive and respond to patient requests as discussed above. To estimate the initial, one-time development cost, it is assumed to require laboratory management staff time ranging from a low of 2 hours to a high of 9 hours per laboratory. To convert the number of hours to an estimated cost per laboratory, we applied the rate of $50.06 (see Table 1) to the assumed 2 to 9 hour time range yields an estimated cost per laboratory ranging from $100.12 to $450.54, which when applied to the estimated 22,671 laboratories impacted results in a total estimated one-time development cost ranging from $2,269,821 to $10,214,192.

Table 7 shows the total estimated range of annual costs for the proposed change in undiscounted 2010 dollars and discounted at 3 percent and 7 percent to translate expected benefits or costs in any given future year into present value terms. To calculate the total estimated costs in 2011, we added the cost to develop the necessary policies and processes (which would only be applicable in the first year) and the cost of responding to test report requests. These costs total between $3 million and $56 million for 2011. As subsequent years would only entail the costs associated with processing requests, we simply took the 2011 values for the cost of responding to test reports and applied the same inflation factor used in Table 1 for the hourly rate calculations. The resulting values can be found in Table 7.

TABLE 7—TOTAL ESTIMATED ANNUAL COSTS OF PATIENT TEST REPORT REQUESTS (POLICY DEVELOPMENT AND PROCESSING)

	Undiscounted (Base year: 2010 $)		Discounted at 3 percent		Discounted at 7 percent	
	Low	*High*	*Low*	*High*	*Low*	*High*
2011	$3,033,405	$56,029,285	$2,945,054	$54,397,364	$2,834,958	$52,363,818
2012	787,919	47,275,146	742,689	44,561,359	688,199	41,291,943
2013	810,572	48,634,307	741,788	44,507,280	661,668	39,700,081
2014	833,876	50,032,543	740,888	44,453,266	636,160	38,169,587
2015	857,850	51,470,978	739,989	44,399,318	611,635	36,698,096

Laboratories would be able to offset some of these costs pursuant to § 164.524(c)(4) of the HIPAA Privacy Rule, which permits covered entities to impose on the patient a reasonable, cost-based fee for providing access to their health information, including the cost of supplies for and labor of copying the requested information.

2. Non-Quantifiable Impacts

The burden in this proposed rule would be primarily on laboratories to provide the laboratory test reports when requested by the patient; however, there may be some impacts on the healthcare provider's office. If the patient does not know where the provider sent the test, the provider may need to provide laboratory contact information to the patient so they may request the test report. We assume that notification of the laboratory name and contact information could be provided in as little as 30 seconds; however there are no data to confirm this and we thus request comment on the issue. We also note that since the provider may need to provide an interpretation of the test results, the provider may give the patient a copy of the test report rather than referring the patient to the laboratory for the information.

D. Benefits

Although we cannot quantify the impact on patients, we believe that it would be positive in light of findings from studies that focused on patient receipt of test results from the provider. We found several studies where greater than 90 percent of patients stated they preferred being notified of all test results, both normal and abnormal (1. Baldwin *et al.* Patient preferences for notification of normal laboratory test results: a report from the ASIPS Collaborative. *BMC Fam Practice* 2005;6:11; 2. Booker *et al.* Patient notification and follow-up of abnormal test results. *Arch Intern Med* 1996; 327–

331; 3. Grimes *et al.* Patient preferences and physician practices for laboratory test result notification. *JABFM* 2009:22:6:670–676; and 4. Meza JP and Webster DS. Patient preferences for laboratory test result notification. *Am J Manag Care* 2000; 6:1297–300). These same studies reported, for both the healthcare provider and patient, the preferred method for receiving normal test results was the U.S. mail and direct phone contact from the provider was the preferred method for abnormal test results. These preferences may have changed in the last 5 years given the increase in the use of electronic communications. Advantages reported in these studies for the patient having direct access to the test report include reduced workload for the healthcare provider's office, reduced chance of a patient not being informed of a laboratory test result, and reduced numbers of patients who fail to seek appropriate medical care.

E. Alternatives Considered

The proposed changes to the CLIA regulations and the HIPAA Privacy Rule are being proposed in support of the Department's efforts toward achieving patient-centered health care. Several alternatives were considered before selecting the approach in this proposed rule to provide access to laboratory test reports upon a patient's request. One alternative would have been to leave the regulations as written without making any changes. However, this option would leave in place the restrictions on patients' direct access to their laboratory test results and would therefore impede the goal of promoting patient-centered health care. Another alternative would have been to revise the definition of ''authorized person'' under CLIA to specifically include a patient as an authorized person. This alternative was not considered feasible because the definition of ''authorized person'' in the CLIA regulations also permits individuals to order tests, and it defers to State law for authorization. A last alternative considered would have been to require the laboratory to automatically provide each test report directly to each patient rather than the permissive approach to provide patients access to their reports upon request. However, this alternative would have had the potential of significantly increasing the cost for laboratories since 100 percent of the 300 million to 500 million test reports issued annually would need to be provided to the patients. As discussed earlier in this regulatory impact analysis, we welcome comments and the submission of data and information on the costs and benefits of implementation of this proposed change so that we can conduct a more robust assessment of the alternatives comparing incremental costs and benefits for the final rule.

F. Accounting Statement and Table

We have prepared the following accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule.

Category	*Primary estimate*	*Minimum estimate*	*Maximum estimate*	*Source citation (RIA, preamble, etc.)*
BENEFITS				
Monetized benefits	n/a	n/a	n/a	RIA Section C2.
Annualized qualified, but unmonetized, benefits.	n/a	n/a	n/a	RIA Section C2.
(Unqualified benefits)	n/a	n/a	n/a	RIA Section C2.
COSTS				
Annualized monetized costs (2010 $):				
2011	n/a	$3,033,405	$56,029,285	RIA Sec C1 (Table 9).
2012	n/a	787,919	47,275,146	RIA Sec C1 (Table 9).
2013	n/a	810,572	48,634,307	RIA Sec C1 (Table 9).
2014	n/a	833,876	50,032,543	RIA Sec C1 (Table 9).
2015	n/a	857,850	51,470,978	RIA Sec C1 (Table 9).
Annualized qualified, but unmonetized, benefits.	n/a	n/a	n/a	
Qualitative (unquantified) costs	n/a	n/a	n/a	RIA Section C2.
TRANSFERS				
Annualized monetized transfers: ''on budget''.	n/a	n/a	n/a	
From whom to whom?	n/a	n/a	n/a	
Annualized monetized transfers: ''off-budget''.	n/a	n/a	n/a	
From whom to whom?	n/a	n/a	n/a	
Category	*Effects*			*Source Citation (RIA, preamble, etc.)*
Effects on State, local, and/or tribal governments.	n/a	n/a	n/a	RIA Sec A (Table 4).
Effects on small businesses	n/a	n/a	n/a	RIA Section A.
Effects on wages	n/a	n/a	n/a	
Effects on growth	n/a	n/a	n/a	

G. Conclusion

We estimated the cost to laboratories to provide patients with a copy of their test reports upon request and determined it would cost between $3 million and $56 million in 2011. These costs would diminish in subsequent years. In addition laboratory provision of test reports to patients may provide

information that could benefit the patient by reducing the chance of the patient not being informed of a laboratory test result, reducing the number of patients lost to follow-up, and benefiting health care providers by reducing their workload in providing laboratory test reports.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 493

Administrative practice and procedure, Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 164

Administrative practice and procedure, Computer technology, Electronic information system, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Hospitals, Medicaid, Medical research, Medicare, Privacy, Reporting and recordkeeping requirements, Security.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 493, and the Department proposes to amend 45 CFR Subtitle A, Subchapter C, part 164, as set forth below:

Title 42—Public Health

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 continues to read as follows:

Authority: Section 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(11) through 1861(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11) through 1395x(s)(16)).

Subpart K—Quality System for Nonwaived Testing

2. Section 493.1291 is amended by—

A. Revising paragraph (f).

B. Adding a new paragraph (l).

The revision and addition read as follows:

§ 493.1291 Standard: Test report.

* * * * *

(f) Except as provided in paragraph (l) of this section, test results must be released only to authorized persons and, if applicable, the individuals (or their personal representative) responsible for using the test results and the laboratory that initially requested the test.

* * * * *

(l) Upon a patient's request, the laboratory may provide access to completed test reports that, using the laboratory's authentication process, can be identified as belonging to that patient.

Title 45—Public Welfare

PART 164—SECURITY AND PRIVACY

3. The authority citation for part 164 continues to read as follows:

Authority: 42 U.S.C. 1320d–1320d–8; sec. 264, Pub. Law 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)); secs. 13400–13402, Pub. Law 111–5, 123 Stat. 258–263.

4. Section 164.524 is amended by revising paragraphs (a)(1)(i) and (ii) and removing paragraph (a)(1)(iii) to read as follows:

§ 164.524 Access of individuals to protected health information.

(a) (1) * * *

(i) Psychotherapy notes; and

(ii) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

* * * * *

Dated: April 1, 2011.

Thomas R. Frieden,

Director, Centers for Disease Control and Prevention, Administrator, Agency for Toxic Substances and Disease Registry.

Dated: August 12, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 7, 2011.

Leon Rodriguez,

Director, Office for Civil Rights.

Dated: September 7, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–23525 Filed 9–12–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1214]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: Comments are to be submitted on or before December 13, 2011.

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

You may submit comments, identified by Docket No. FEMA–B–1214, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

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

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

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The

community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

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

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

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

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Cascade County, Montana					
Montana	Unincorporated Areas of Cascade County.	Missouri River (near Mid Canon).	Approximately 200 feet upstream of I–15 (westbound).	None	+3433
			Approximately 1.2 miles upstream of I–15 (eastbound).	None	+3440

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

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

ADDRESSES

Unincorporated Areas of Cascade County

Maps are available for inspection at 415 3rd Street Northwest, Great Falls, MT 59403.

Unincorporated Areas of Pontotoc County, Oklahoma					
Oklahoma	Unincorporated Areas of Pontotoc County.	Clear Boggy Creek	At the downstream side of Cradduck Road.	None	+865
			Approximately 0.4 mile upstream of Cradduck Road.	None	+876
Oklahoma	Unincorporated Areas of Pontotoc County.	Town Branch	Approximately 400 feet upstream of South Saint Memphis Road.	+853	+852
			Approximately 1,600 feet upstream of South Saint Memphis Road.	+855	+856
Oklahoma	Unincorporated Areas of Pontotoc County.	Tributary 1	At the downstream side of U.S. Route 3	None	+824
			Approximately 1,975 feet upstream of County Road East 1570.	None	+845
Oklahoma	Unincorporated Areas of Pontotoc County.	Tributary 2	Approximately 600 feet upstream of the Tributary 1 confluence.	None	+831

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
			Approximately 1,175 feet upstream of County Road East 1570.	None	+853

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

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

ADDRESSES

Unincorporated Areas of Pontotoc County

Maps are available for inspection at 120 West 13th Street, Ada, OK 74821.

Flooding Source(s)	Location of Referenced Elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities Affected
		Effective	Modified	
George County, Mississippi, and Incorporated Areas				
Black Creek	Approximately 1.7 miles downstream of State Route 57.	None	+39	Unincorporated Areas of George County.
	Approximately 1.2 miles upstream of State Route 57	None	+43	
Chickasawhay River	At the Leaf River confluence	None	+59	Unincorporated Areas of George County.
	Approximately 3.8 miles upstream of the Leaf River confluence.	None	+61	
Depot Creek	Approximately 1.0 mile downstream of Beaver Dam Road.	None	+141	City of Lucedale, Unincorporated Areas of George County.
	Approximately 1,140 feet upstream of Depot Road	None	+189	
Indian Creek	Approximately 0.5 mile downstream of Grain Elevator Road.	None	+38	Unincorporated Areas of George County.
	Approximately 0.6 mile upstream of Grain Elevator Road.	None	+56	
Leaf River	At the Chickasawhay River confluence	None	+59	Unincorporated Areas of George County.
	Approximately 3.1 miles upstream of the Chickasawhay River confluence.	None	+60	
Pascagoula River	Approximately 1.2 miles upstream of the Plum Bluff Cutoff confluence.	None	+40	Unincorporated Areas of George County.
	Approximately 1,690 feet upstream of Merrill Salem Road.	None	+59	
Red Creek	Approximately 1.8 miles downstream of Red Creek Road.	None	+37	Unincorporated Areas of George County.
	Approximately 2.9 miles upstream of Red Creek Road.	None	+46	

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

Flooding Source(s)	Location of Referenced Elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities Affected
		Effective	Modified	

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

ADDRESSES

City of Lucedale

Maps are available for inspection at the City Clerk's Office, 5126 Main Street, Lucedale, MS 39452.

Unincorporated Areas of George County

Maps are available for inspection at the George County Courthouse, 355 Cox Street, Lucedale, MS 39452.

Rockland County, New York (All Jurisdictions)				
Demarest Kill	At the West Branch Hackensack River confluence	+95	+98	Town of Clarkstown.
	At the upstream side of Little Tor Road	+248	+247	
East Branch Hackensack River.	At the upstream side of Old Mill Road	+86	+88	Town of Clarkstown.
	Approximately 600 feet downstream of Rockland Lake.	+150	+151	
Golf Course Brook	At the upstream side of Nottingham Drive	+325	+326	Village of Montebello.
	At the upstream side of Spook Rock Road	+491	+492	
Hackensack River	At the Town of Orangetown/Town of Clarkstown corporate limit.	+59	+58	Town of Clarkstown, Town of Orangetown.
	At the downstream side of Old Mill Road	+67	+66	
Minisceongo Creek	At the upstream side of the dam (near Gagan Road)	+10	+11	Town of Haverstraw, Village of Haverstraw, Village of West Haverstraw.
	Approximately 1,000 feet upstream of Thiels Ivy Road	None	+349	
Nauraushaun Brook	At the Hackensack River confluence	+55	+57	Town of Clarkstown, Town of Orangetown.
	Approximately 200 feet upstream of Smith Road	+295	+297	
North Branch Pascack Brook	At the Pascack Brook confluence	+350	+351	Town of Ramapo, Town of Clarkstown, Village of New Hempstead, Village of New Square, Village of Spring Valley.
	Approximately 250 feet upstream of Greenridge Way	+514	+513	
Pascack Brook	At the New Jersey state boundary	+202	+207	Town of Ramapo, Town of Clarkstown, Town of Orangetown, Village of Chestnut Ridge, Village of Kaser, Village of Spring Valley.
	At the downstream side of Grosser Lane	+580	+578	
Sparkill Creek	Approximately 350 feet downstream of Rock Road	+13	+14	Village of Piermont, Town of Orangetown.
	At the upstream side of Erie Street	+123	+124	
West Branch Hackensack River.	At the upstream side of Ridge Road	+87	+88	Town of Clarkstown.
	At the Town of Ramapo corporate limit	+297	+290	
West Branch Saddle River	At the upstream side of the New Jersey state boundary.	+324	+325	Town of Ramapo, Village of Airmont.
	Approximately 280 feet upstream of Olympia Lane	+533	+530	

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

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

ADDRESSES

Town of Clarkstown

Maps are available for inspection at the Clarkstown Town Hall, 10 Maple Avenue, New City, NY 10956.

Town of Haverstraw

Flooding Source(s)	Location of Referenced Elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities Affected
		Effective	Modified	

Maps are available for inspection at the Haverstraw Town Hall, 1 Rosemand Road, Garnerville, NY 10923.

Town of Orangetown
Maps are available for inspection at the Town of Orangetown Building Department, 20 Greenbush Road, Orangeburg, NY 10962.

Town of Ramapo
Maps are available for inspection at the Ramapo Town Hall, 237 State Route 59, Suffern, NY 10901.

Village of Airmont
Maps are available for inspection at the Village Hall, 251 Cherry Lane, Airmont, NY 10982.

Village of Chestnut Ridge
Maps are available for inspection at the Village Hall, 277 Old Nyack Turnpike, Chestnut Ridge, NY 10977.

Village of Haverstraw
Maps are available for inspection at the Haverstraw Village Hall, 40 New Main Street, Haverstraw, NY 10927.

Village of Kaser
Maps are available for inspection at the Kaser Village Hall, 15 Elyon Road, Monsey, NY 10952.

Village of Montebello
Maps are available for inspection at the Village Hall, 1 Montebello Road, Montebello, NY 10901.

Village of New Hempstead
Maps are available for inspection at the New Hempstead Village Hall, 108 Old Schoolhouse Road, New City, NY 10956.

Village of New Square
Maps are available for inspection at the Village Hall, 766 North Main Street, New Square, NY 10977.

Village of Piermont
Maps are available for inspection at the Village Hall, 478 Piermont Avenue, Piermont, NY 10968.

Village of Spring Valley
Maps are available for inspection at the Village Hall, 200 North Main Street, Spring Valley, NY 10977.

Village of West Haverstraw
Maps are available for inspection at the Village Hall, 130 Samsondale Avenue, West Haverstraw, NY 10993.

Vernon County, Wisconsin, and Incorporated Areas

Mississippi River	Approximately 185 feet upstream of the Crawford County boundary.	+635	+633	Unincorporated Areas of Vernon County, Village of De Soto, Village of Genoa, Village of Stoddard.
	Approximately 2.75 miles downstream of the La Crosse County boundary.	+639	+638	
West Branch Baraboo River	Approximately 272 feet downstream of the West Branch Baraboo River Split Flow 2 confluence.	+941	+932	City of Hillsboro, Unincorporated Areas of Vernon County.
	At Sebranek Lane	+967	+966	
West Branch Baraboo River Split Flow 2.	Approximately 704 feet downstream of the West Branch Baraboo River confluence.	None	+931	City of Hillsboro, Unincorporated Areas of Vernon County.
	At the West Branch Baraboo River confluence	None	+932	

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

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

ADDRESSES

City of Hillsboro
Maps are available for inspection at 123 Mechanic Street, Hillsboro, WI 54634.

Unincorporated Areas of Vernon County
Maps are available for inspection at 400 Courthouse Square, Viroqua, WI 54665.

Village of De Soto
Maps are available for inspection at 115 South Houghton Street, De Soto, WI 54624.

Village of Genoa
Maps are available for inspection at 111 Main Street, Genoa, WI 54632.

Flooding Source(s)	Location of Referenced Elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities Affected
		Effective	Modified	
Village of Stoddard				
Maps are available for inspection at 180 North Main Street, Stoddard, WI 54658.				

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

Dated: August 30, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–23413 Filed 9–13–11; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register
Vol. 76, No. 178
Wednesday, September 14, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0088]

Determination of Pest-Free Areas in Australia; Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have received a request from the Government of Australia to recognize additional areas as pest-free areas for Mediterranean fruit fly (*Ceratitis capitata*) or Queensland fruit fly (*Bactrocera tryoni*). After reviewing the documentation submitted in support of this request, the Administrator of the Animal and Plant Health Inspection Service has determined that these areas meet the criteria in our regulations for recognition as pest-free areas. We are making that determination, as well as an evaluation document we have prepared in connection with this action, available for review and comment.

DATES: We will consider all comments that we receive on or before November 14, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0088-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0088, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0088* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith C. Jones, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734–7467.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–51, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. One of the designated phytosanitary measures is that the fruits or vegetables are imported from a pest-free area [1] in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin.

Under the regulations in § 319.56–5, APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standards for Phytosanitary Measures (ISPM) No. 4, ''Requirements For the Establishment of Pest Free Areas.'' The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in our regulations in 7 CFR 300.5. In addition, APHIS must also approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

APHIS has received a request from the Government of Australia to recognize new areas of that country as being free of *Ceratitis capitata,* the Mediterranean fruit fly (Medfly), and to recognize other areas of the country as being free of *Bactrocera tryoni,* the Queensland fruit fly. Specifically, the Government of Australia asked that we recognize the States of New South Wales, Northern Territory, Queensland, South Australia, Tasmania, and Victoria as free of Medfly and the State of Western Australia as free of Queensland fruit fly.

Each proposed pest-free area is free of one of the fruit flies, but may have the other fruit fly, so fruit from these areas of Australia would still require a quarantine treatment. However the treatments required are different for each fly, are less stringent than the treatments for both flies, and therefore are less damaging to the commodity.

In accordance with our regulations and the criteria set out in ISPM No. 4, we have reviewed and approved the survey protocols and other information provided by Australia relative to its system to establish freedom, phytosanitary measures to maintain freedom, and system for the verification of the maintenance of freedom. Because this action concerns the expansion of a currently recognized pest-free area in Australia from which fruits and vegetables are authorized for importation into the United States, our review of the information presented by Australia in support of its request is examined in a commodity import evaluation document (CIED) titled ''Recognition of Additional States as Medfly and Queensland fruit fly Pest-Free Areas (PFA) for Australia.''

The CIED may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the CIED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

[1] A list of pest-free-areas currently recognized by APHIS can be found at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/DesignatedPestFreeAreas.pdf.*

Therefore, in accordance with § 319.56–5(c), we are announcing the Administrator's determination that the States of New South Wales, Northern Territory, Queensland, South Australia, Tasmania, and Victoria meet the criteria of § 319.56–5(a) and (b) with respect to freedom from Medfly and the State of Western Australia meets the criteria of § 319.56–5(a) and (b) with respect to freedom from Queensland fruit fly. After reviewing the comments we receive on this notice, we will announce our decision regarding the status of these areas with respect to their freedom from Medfly and Queensland fruit fly. If the Administrator's determination remains unchanged, we will amend the list of pest-free areas to list the States of New South Wales, Northern Territory, Queensland, South Australia, Tasmania, and Victoria as free of Medfly and the State of Western Australia as free of Queensland fruit fly.

Done in Washington, DC, this 7th day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–23431 Filed 9–13–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0089]

Oral Rabies Vaccine Trial; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to an oral rabies vaccination field trial in West Virginia. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Slate, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chennell Drive, Suite 7, Concord, NH 03301; (603) 223–9623. To obtain copies of the environmental assessment or finding of no significant impact, contact Ms. Beth Kabert, Environmental Coordinator, Wildlife Services, 140–C Locust Grove Road, Pittstown, NJ 08867; (908) 735–5654, fax (908) 735–0821, or e-mail *beth.e.kabert@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

On August 8, 2011, we published in the **Federal Register** (76 FR 48119–48120, Docket No. APHIS–2011–0089) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed field trial to test the safety and efficacy of an experimental oral rabies vaccine for wildlife in West Virginia.

We solicited comments on the EA for 30 days ending September 7, 2011. We received 13 comments by that date. They were from private citizens and representatives of public health, agriculture, and natural resources agencies in the United States and Canada. Nine of the commenters fully supported the proposed field trial. The remaining commenters presented specific questions or suggestions regarding the field trial or the experimental vaccine. All the comments, and APHIS' responses to those comments, are presented in an appendix to the EA (see footnote 1).

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the implementation of a field trial to test the safety and efficacy of the AdRG1.3 wildlife rabies vaccine in Greenbrier, Summers, and Monroe Counties, WV, including portions of U.S. Forest Service National Forest System lands, but excluding Wilderness Areas. The finding, which is based on the EA, reflects our determination that the distribution of this experimental wildlife rabies vaccine will not have a significant impact on the quality of the human environment.

[1] To view the notice, EA, risk assessments, the comments we received, and the FONSI, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2011–0089.*

The EA and FONSI may be viewed on the APHIS Web site at *http://www.aphis.usda.gov/regulations/ws/ws_nepa_environmental_documents.shtml* and on the *Regulations.gov* Web site (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained as described under **FOR FURTHER INFORMATION CONTACT.**

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 8th day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–23587 Filed 9–13–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fremont and Winema Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting/field tour.

SUMMARY: The Fremont and Winema Resource Advisory Committee will meet in Bly, Oregon and travel to various project sites along the North Fork of the Sprague River, for the purpose of monitoring and viewing active and completed Title II watershed restoration projects. The committee operates in compliance with the Federal Advisory Committee Act, under the provisions of Title II of the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) of 2000 (reauthorized in 2008).

DATES: The tour will be held on Oct 6, 2011 9 a.m.–14 p.m.

ADDRESS: The tour will commence from Bly, OR onto the Fremont-Winema Forest and along the North Fork of the Sprague River including a private ranch.

Send written comments to Fremont and Winema Resource Advisory Committee, c/o USDA Forest Service, Klamath Ranger District, 2819 Dahlia, Suite A, Klamath Falls, Oregon or electronically to *agowan@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Amy Gowan, Designated Federal Official, c/o Klamath Ranger District, 2819 Dahlia, Suite A, Klamath Falls, Oregon, telephone (541) 883–6741 or Lucinda Nolan RAC Coordinator 1301 South G Street, Lakeview, Oregon 97630, telephone (541) 947–6277.

SUPPLEMENTARY INFORMATION: There will be an information packet available the day of the tour. It will include an agenda, a map depicting the location of projects to be monitored, original Title II project proposals and associated project status reports. All Fremont and Winema Resource Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend, however they will need to provide their own transportation.

Dated: September 7, 2011.

Amy Gowan,

Designated Federal Official.

[FR Doc. 2011–23477 Filed 9–13–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 14, 2011.

SUMMARY: On March 8, 2011, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC). *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Recission in Part, and Intent to Rescind in Part,* 76 FR 12704 (March 8, 2011) (*Preliminary Results*). Based upon our analysis of comments received from interested parties, we made changes to the margin calculations for the final results.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Scott Hoefke, 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) 482–2924, (202) 482–4947 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2011, the Department published the *Preliminary Results* of administrative review of the antidumping duty order on certain preserved mushrooms from the PRC. On March 28, 2011, Monterrey Mushrooms, Inc. (Petitioner), Blue Field (Sichuan) Food Industrial Co., Ltd. (Blue Field) and Xiamen International Trade & Industrial Co., Ltd. (XITIC) submitted additional information for proposed surrogate values. On April 21, 2011, Blue Field submitted comments regarding the *Preliminary Results.*[1]

In the *Preliminary Results,* the Department invited interested parties to submit case briefs within 30 days of publication of the *Preliminary Results* and rebuttal briefs within five days after the due date for filing case briefs. *See Preliminary Results,* 76 FR at 12710. We received case briefs from Guangxi Jisheng Foods, Inc. (Jisheng) and XITIC on April 7, 2011, and a case brief from Petitioner on April 8, 2011. On April 12, 2011, the Department extended the due date for rebuttal briefs by two days. Rebuttal briefs from XITIC and Petitioner were received April 12, 2011, and April 15, 2011, respectively. On April 20, 2011, we extended the due date for Blue Field's rebuttal brief until April 25, 2011.[2] On April 21, 2011, we received a rebuttal brief from Blue Field.

On June 6, 2011, the Department issued a letter to parties soliciting comments regarding the conversion factor used for the surrogate value of manure in the *Preliminary Results.* On June 13, 2011, the Department received comments from both the petitioner and XITIC concerning this issue.

On July 13, 2011 we extended the due date for the final results of this review by sixty days. *See Certain Preserved Mushrooms From the People's Republic of China; Extension of time Limit for Final Results of Antidumping Duty Administrative Review,* 76 FR 41215 (July 13, 2011).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the memorandum entitled, ''Issues and Decision Memorandum for the Final Results in the Administrative Review of Certain Preserved Mushrooms from the People's Republic of China,'' which is dated concurrently with and adopted by this notice (Decision Memorandum). A list of the issues raised, and to which we respond in the Decision Memorandum, is attached to this notice as an appendix. The Decision Memorandum is a public document, and is on file in the Central Records Unit (CRU), Main Commerce Building, Room 7046, and is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Final Rescission in Part

In the *Preliminary Results,* the Department announced its intent to rescind the review with respect to five companies who claimed they made no shipments of subject merchandise during the period of review (POR). We made inquiries with CBP as to whether any shipments were entered with respect to these five companies during the POR. *See* CBP message numbers 0347302, 0347303, 0347304, 0347305, and 0347306, all dated December 13, 2010. We received no responses from CBP to those inquiries. We also examined CBP information used in the selection of the mandatory respondents to further confirm no shipments by these companies during the POR. *See* the attachment to ''Letter from Robert James to All Interested Parties'' dated April 2, 2010. The five companies are: Dujianghyan Xingda Foodstuff Co., Fujian Pinghe Baofeng Canned Foods, Fujian Zishan Group Co., Ltd., Longhai Guangfa Food Co., and Xiamen Longhuai Import & Export Co. *See Preliminary Results* 76 FR at 12705. Because the Department did not receive any information to the contrary, we continue to find that these companies did not make any shipments during the POR. Thus, for these final results, we are rescinding this review, with respect to the five above-named companies, in accordance with 19 CFR 351.213(d)(3).

Period of Review

The POR is February 1, 2009, through January 31, 2010.

[1] Blue Field had originally submitted comments on March 14, 2011. However, those comments were deemed to have new information and were returned to Blue Field on April 15, 2011. *See* letter to Blue Field, dated April 15, 2011.

[2] *See* Memorandum to the File, From Fred Baker, Analyst, Subject: Due Date for Rebuttal Brief from Blue Field (Sichuan) Food Industrial Co., Ltd. (Blue Field), dated April 20, 2011.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[3]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms;'' (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 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 order is dispositive.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have made revisions to certain surrogate values (SVs) and the margin calculation for XITIC, Blue Field, and Jisheng. These changes are discussed in the relevant sections of the Decision Memorandum.

Separate Rates Determination

In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See Policy Bulletin 5.1;*[4] *see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstance, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53080 (September 8, 2006); and *Final Determination of Sales at less Than Fair Value and Final Partial Affirmative Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

In the *Preliminary Results,* the Department preliminarily determined that the following companies met the criteria for separate rate status: Ayecue (Liaocheng) Foodstuff Co., Ltd., Fujian Golden Banyan Foodstuffs Industrial Co., Ltd., Shandong Jiufa Edible Fungus Corporation, Ltd., and Zheijiang Iceman Group Co., Ltd.[5]

Additionally, in the *Preliminary Results,* we noted that the Department received completed responses to separate-rate questions from Blue Field, Jisheng, and XITIC in their Section A questionnaire responses. We also received separate-rate certifications from Blue Field and XITIC. We preliminary granted separate rate status to Blue Field, Jisheng, and XITIC based on this submitted information. *See Preliminary Results,* 76 FR at 12705–12707.

We did not receive any information since the issuance of the *Preliminary Results* that provides a basis for reconsidering these preliminary separate-rate determinations. Therefore, the Department continues to find that Blue Field, Jisheng, XITIC, and the four above-named, non-individually examined companies meet the criteria for a separate rate.

Separate Rate Calculation

The separate rate is deteremined based on the estimated weighted-average antidumping margins established for exporters and producers selected for individual review (*i.e.,* mandatory respondents). Respondents other than mandatory respondents will receive the weighted-average of the margins calculated for those companies selected, excluding *de minimis* margins or margins based entirely on adverse facts available. In this review, we have assigned the weighted average of the three mandatory respondents to the companies not selected for individual examination.

Final Results of the Review

The Department has determined that the following margins exist for the period February 1, 2009, through January 31, 2010.

Exporter	Weighted-average margin (percent)
Blue Field (Sichuan) Food Industrial Co., Ltd	20.42
Guangxi Jisheng Foods, Inc	266.13
Xiamen International Trade & Industrial Co., Ltd	13.12
Ayecue (Liaocheng) Foodstuff Co., Ltd	84.55
Fujian Golden Banyan Foodstuffs Industrial Co., Ltd	84.55
Shandong Jiufa Edible Fungus Corporation, Ltd	84.55
Zheijiang Iceman Group Co., Ltd	84.55

Assessment Rates

The Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer-specific (or customer-specific) assessment rates for merchandise subject to this review. Jisheng reported entered values for its U.S. sales; thus we calculated 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 entered value of the sales to each importer (or customer). However, Blue Field and XITIC did not report entered values for their U.S. sales. Accordingly, we calculated a per-unit assessment rate

[3] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, the United States Court of Appeals for the Federal Circuit upheld this decision. *See Tak Fat* v. *United States,* 396 F.3d 1378 (Fed. Cir. 2005).

[4] *Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries*, 70 FR 17233 (April 5, 2005), also available at: *http://ia.ita.doc.gov/policy/index.html.* (*Policy Bulletin 5.1*)

[5] We also preliminarily found that Zhangzhou Gangchang Canned Foods Co., Ltd. met the requirements for a separate rate, but we rescinded the review with respect to this company in the *Preliminary Results,* due to the petitioner withdrawing its request. *See Preliminary Results* at 12705.

for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise.

To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), the Department calculated importer-specific *ad valorem* ratios based on the entered value or the estimated entered value, when entered value was not reported. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent).

We intend to instruct CBP to liquidate entries of subject merchandise exported by the PRC-wide entity at the estimated antidumping duty rate in effect at the time of entry. Because the PRC-wide entity was not reviewed during this POR, the PRC-wide rate remains 198.63 percent, the rate established in the administrative review for the most recent period.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (1930): (1) The cash-deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of this review (except that if the rate for a particular company is *de minimis, i.e.,* less than 0.50 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period of review; (3) if the exporter is a firm not covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the PRC-wide rate of 198.63 percent. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final 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.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 6, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

Comment 1. Surrogate Value for Fresh Mushrooms.

Comment 2. Surrogate Value for Cow Manure.

Comment 3. Ministerial Errors with Respect to International Freight.

Comment 4 Surrogate Value for International Freight.

Comment 5. Computation of Domestic Inland Freight.

Comment 6. Surrogate Value for Natural Gas.

Comment 7. Whether to Apply Adverse Facts Available to Certain of Jisheng's U.S. sales.

Comment 8. Whether to Apply Adverse Facts Available for Certain of Jisheng's Sales for Which Jisheng Reported No Packing Costs.

Comment 9. Whether the Department's Failure to Consider Jisheng's February 2011 Submission in the Preliminary Results was Improper and Not Supported by Law.

Comment 10. Casing Soil Usage.

Comment 11. Surrogate Value of Lime.

Comment 12. Surrogate Value of Steam Coal.

Comment 13. Surrogate Value of Mushroom Spawn.

Comment 14. Zeroing.

Comment 15. Error of Normal Value Calculation by Different Units of Measurement.

Comment 16. Calculating Cost of Metal Lid.

Comment 17. Calculation of Land Rent.

[FR Doc. 2011–23557 Filed 9–13–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA669

Permanent Advisory Committee To Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission (WCPFC) on October 25–October 27, 2011. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the PAC will be held on October 25, 2011 from 8 a.m. to 4:30 p.m. H.S.T. (or until business is concluded), October 26, 2011 from 8 a.m. to 4:30 p.m. H.S.T. (or until business is concluded), and October 27, 2011 from 8 a.m. to 12 p.m. H.S.T.

ADDRESSES: The meeting will be held in the Diamond Head Meeting Room at the Outrigger Reef on the Beach Hotel, 2169 Kalia Road, Honolulu, HI 96815–1989.

FOR FURTHER INFORMATION CONTACT: Oriana Villar, NMFS Pacific Islands Regional Office; *telephone:* 808–944–2256; *facsimile:* 808–973–2941; *e-mail: Oriana.Villar@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (the Act), the Department of Commerce, in consultation with the U.S. Commissioners, has appointed a Permanent Advisory Committee to advise the U.S. Commissioners to the WCPFC established under the Western and Central Pacific Fisheries Convention. The PAC supports the work of the U.S. National Section, which is made up of the U.S. Commissioners and the Department of State, to the WCPFC in an advisory capacity with respect to

U.S. participation in the WCPFC. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. The next regular annual session of the WCPFC is scheduled for December 5–December 9, 2011, in Koror, Palau. For more information on this meeting, please visit the WCPFCs *Web site: http://wcpfc.int/.*

Meeting Topics

The PAC meeting topics may include, but are not limited to, the following: (1) Outcomes of the 2010 and 2011 WCPFC Scientific Committee, Northern Committee, and Technical and Compliance Committee meetings; (2) development of conservation and management measures for bigeye, yellowfin and skipjack tuna and other species for 2012 and beyond; (3) development of a WCPFC compliance monitoring scheme; (4) issues related to the impacts of fishing on non-target, associated and dependent species, such as sea turtles, seabirds and sharks (5) input and advice from the PAC on issues that may arise at the 2011 WCPFC meetings, potential proposals from other WCPFC members; and (6) other issues as they arise.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Oriana Villar at (808) 944–2256 by October 15, 2011.

Authority: 16 U.S.C. 6902.

Dated: September 8, 2011.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–23569 Filed 9–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA699

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Squid, Mackerel, Butterfish Advisory Panel will hold a public meeting.

DATES: The meeting will be held on September 30, 2011, at 10 a.m. until 4 p.m.

ADDRESSES: The meeting will be held via webinar with a listening station also available at the Council Address below. Webinar registration: *https://www1.gotomeeting.com/register/332515609 Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; *telephone:* (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; *telephone:* (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Advisory Panel will develop recommendations for the Council regarding Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. See *http://www.mafmc.org/fmp/msb_files/msbAm14current.htm* for details on the amendment, which deals with catch and management of river herrings and shads in the Atlantic mackerel, squid, and butterfish fisheries.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office (302) 526–5251 at least 5 days prior to the meeting date.

Dated: September 9, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–23460 Filed 9–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA408

Small Takes of Marine Mammals Incidental to Specified Activities; Cape Wind's High Resolution Survey in Nantucket Sound, MA

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a complete and adequate application from Cape Wind Associates for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pre-construction high resolution survey activities. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing to issue an IHA to Cape Wind Associates to incidentally harass, by Level B harassment, five species of marine mammals during the specified activity within Nantucket Sound and is requesting comments on its proposal.

DATES: Comments and information must be received no later than October 14, 2011.

ADDRESSES: Comments on the application and this proposal should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *ITP.Magliocca@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than

commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On April 26, 2011, NMFS received an application from Cape Wind Associates requesting an IHA for the take, by Level B harassment, of small numbers of minke whales, Atlantic white-sided dolphins, harbor porpoises, gray seals, and harbor seals, incidental to high resolution survey activities. Upon receipt of additional information, NMFS determined the application adequate and complete on August 5, 2011.

Cape Wind Associates proposes to conduct a high resolution geophysical survey in Nantucket Sound, Massachusetts. The survey would satisfy the mitigation and monitoring requirements for ''cultural resources and geology'' in the environmental stipulations of the Bureau of Ocean Energy Management, Regulation and Enforcement's lease. This is part of a long-term Cape Wind energy project involving the future installation of 130 wind turbine generators. Because sounds from the survey equipment could harass marine mammals, NMFS is proposing to issue an IHA for take incidental to the high resolution geophysical survey.

Description of the Specified Activity

Cape Wind Associates proposes to conduct a high resolution geophysical survey in order to acquire remote-sensing data around Horseshoe Shoal which would be used to characterize resources at or below the seafloor. The purpose of the survey would be to identify any submerged cultural resources that may be present and to generate additional data describing the geological environment within the survey area. This specific activity is part of a larger Cape Wind energy project, which involves the installation of 130 wind turbine generators on Horseshoe Shoal over a two-year period. The survey would collect data along predetermined track lines using a towed array of instrumentation, which would include a singlebeam depth sounder, side scan sonar, magnetometer, shallow-penetration subbottom profiler, multibeam depth sounder, and medium-penetration subbottom profiler. The proposed high resolution geophysical survey activities would not result in any disturbance to the sea floor. Cape Wind Associates also plans to conduct a geotechnical survey that is not expected to impact marine mammals; therefore, no incidental takes are being requested for this activity. In summary, the geotechnical survey would include the acquisition of soil borings and/or cone penetrometer tests at select wind turbine generator locations, as well as one vibracore at the planned location of each wind turbine generator. These aspects of the survey are not expected to generate sound pressure levels that would exceed marine mammal harassment thresholds, except for the area immediately adjacent to the core barrel. A 500-meter (m) exclusion zone would be in place and continuously monitored to prevent marine mammal harassment.

Survey activities are necessary prior to construction of the wind turbine array and are scheduled to begin in the fall of 2011, continuing on a daily basis for up to five months. Survey vessels would operate during daytime hours only and Cape Wind Associates estimates that one survey vessel would cover about 17 NM of track line per day. Therefore, Cape Wind Associates conservatively estimates that survey activities would take 137 days. However, if more than one survey vessel is used, the survey duration would be considerably shorter.

The high resolution geophysical survey would cover approximately 110 square kilometers (km^2) (42.5 square miles [mi^2]). This area includes the future location of the wind turbine generators—an area about 8.4 km (5.2 mi) from Point Gammon, 17.7 km (11 mi) from Nantucket Island, and 8.9 km (5.5 mi) from Martha's Vineyard—and cables connecting the wind park to the mainland. The survey area within the wind park would be transited by survey vessels towing specialized equipment along primary track lines and perpendicular tie lines. Preliminary survey designs include primary track lines with north-south orientations and assume 30-m line spacing. Preliminary survey designs also call for tie lines to likely run in a west-east orientation covering targeted areas of the construction footprint where wind turbine generators would be located. The survey area along the interconnecting submarine cable route includes a 100-foot (ft) construction corridor covered by three track lines, as well as an anchor corridor north of the wind farm's area of potential effect. The total track line distance covered during the survey is estimated to be about 4,292 km (2,317 NM).

Multiple survey vessels may operate within the survey area and would travel at about 3 knots during data acquisition and 15 knots during transit between the survey area and port. The survey vessels would acquire data continuously throughout the survey area during the day and terminate survey activities before dark, prior to returning to port. Given the slow speeds at which the survey vessels would operate, increase of vessel collision risk to marine mammals is expected to be negligible. Vessel sounds during survey activities would result from propeller cavitations, propeller singing, propulsion, flow noise from water dragging across the hull, and bubbles breaking in the wake. The dominant sound source from vessels would be from propeller cavitations; however, sounds resulting from survey vessel activity are considered to be no louder than the existing ambient sound levels and sound generated from regular shipping and boating activity in Nantucket Sound (MMS, 2009).

The dominant sources of sound during the proposed survey activities would be from the towed equipment used to gather seafloor data. Two of the seismic survey devices used during the high resolution geophysical survey emit sounds within the hearing range of marine mammals in Nantucket Sound: Shallow-penetration and medium-penetration subbottom profilers (known as a ''chirp'' and ''boomer,'' respectively). Cape Wind Associates would use a chirp to provide high resolution data of the upper 15 m (49 ft) of sea bottom. An EdgeTech 3000 Series or similar model would be used. The chirp would be towed near the center of the survey vessel directly adjacent to the gunwale of the boat, about 1 to 1.5 m (3 to 5 ft) beneath the water's surface. Sources such as the chirp are considered non-impulsive, intermittent sounds. The frequency range for this instrument is generally 2 to 16 kilohertz (kHz)—a range audible by all marine mammal species in Nantucket Sound. The estimated sound pressure level at the source would be 201 dB re 1 μPa at 1 m with a typical pulse length of 32 milliseconds and a pulse repetition rate of 4 per second. Underwater sound levels from the chirp would dissipate to 180 dB (the Level A harassment threshold, described later) at 17 m (56 ft) and to 160 dB (the Level B harassment threshold) at 258 m (847 ft). This calculation is based on a practical spreading model which represents an intermediate condition between spherical and cylindrical spreading to estimate sound propagation. Cape Wind Associates would use a boomer to obtain deeper resolution of geologic layering that cannot be imaged by the chirp. An Applied Acoustics 200, 300, or similar model would be used. The boomer would be towed about 10 to 15 ft behind the survey vessel's stern at the water's surface. Unlike the chirp, the boomer emits an impulse sound, characterized by a relatively rapid rise-time to maximum pressure followed by a period of diminishing and oscillating pressures (Southall *et al.,* 2007). The boomer has a broad frequency range of 0.5 to 20 kHz—a range audible by all marine mammal species in Nantucket Sound. The estimated sound pressure level at the source would be 205 dB re 1 μPa at 1 m with a short duration sound pulse of about 330 milliseconds. Underwater sound levels from the boomer would dissipate to 180 dB at 30 m (98 ft) and to 160 dB at 444 m (1,457 ft). This calculation is also based on practical spreading.

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals with known occurrences in Nantucket Sound that could be harassed by high resolution geophysical survey activity in Nantucket Sound are listed in Table 1. These are the species for which take is being requested. In general, large whales do not frequent Nantucket Sound, but they are discussed below because some species have been reported near the project vicinity.

TABLE 1—MARINE MAMMALS THAT COULD BE IMPACTED BY SURVEY ACTIVITIES IN NANTUCKET SOUND

Common name	Scientific name	MMPA status[1]	Time of year in New England
Whales and Dolphins (Cetaceans)			
Minke whale	*Balaenoptera actuorostrata*	N–D	April through October.
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	N–D	October through December.
Harbor porpoise	*Phocoena phocoena*	N–D	Year-round (peak Sept-Apr).
Seals (Pinnipeds)			
Gray seal	*Halichoerus grypis*	N–D	Year-round.
Harbor seal	*Phoca vitulina*	N–D	October through April.

[1]N-D = non-depleted. None of the species are listed under the Endangered Species Act.

Sightings data indicate that whales rarely visit Nantucket Sound and there are no sightings of large whales on Horseshoe Shoal. Since 2002, no humpback whales (*Megaptera novaeangilae*) have been observed anywhere in Nantucket Sound and there are no documented occurrences of fin whales (*Balaenoptera physalus*) within Nantucket Sound. Right whales (*Eubaelena glacialis*) are considered rare in Nantucket Sound and have not been sighted on Horseshoe Shoal. All of the right whales observed in Nantucket Sound during 2010 quickly transited the area and there is no evidence of any persistent aggregations around the proposed project area. The best available science indicates that humpback whales, fin whales, and right whales—although present in the New England region—are rare in Nantucket Sound and transient individuals may be occasionally found 20 km (12 mi) from the proposed project area; this is likely due to the shallow depths of Nantucket Sound and its location outside of the coastal migratory corridor.

Likewise, sightings data shows no record of long-finned pilot whales, striped dolphins, Atlantic spotted dolphins, common dolphins, Risso's dolphins, *Kogia* species, harp seals, or hooded seals in Nantucket Sound, although these stocks exist in the New England region. Therefore, Cape Wind Associates is not requesting, nor is NMFS proposing, take for the aforementioned species.

Minke Whales

In the North Atlantic, minke whales are found from Canada to the Gulf of Mexico and concentrated in New England waters, particularly in the spring and summer months. Minke whales found in Nantucket Sound are part of the Canadian East Coast stock, which runs from the Davis Strait down to the Gulf of Mexico. The best available abundance estimate for this stock is 8,987 individuals. Sightings data indicate that minke whales prefer shallower waters when in the Cape Cod vicinity, but depths significantly greater than Nantucket Sound. Sightings per unit effort estimates for Nantucket Sound are 0.1 to 5.9 minke whales per 1,000 km of survey track for spring and summer. However, estimates may be biased due to heavier whale watching activities during those months. Minke whales are one of the most abundant whale species in the world and their population is considered stable throughout. The minke whale is not listed under the Endangered Species Act nor considered strategic under the MMPA.

Atlantic White-Sided Dolphin

Atlantic white-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, typically along the continental shelf and slope. In the

western North Atlantic, they are found from North Carolina to Greenland. During summer months, Atlantic white-sided dolphins move north and closer to shore. Atlantic white-sided dolphins are rare in Nantucket Sound, but are found in deeper waters around Massachusetts and Rhode Island. In 2007, the estimated population size of the Western North Atlantic stock was about 63,000 animals. There is insufficient data to determine population trends, but Atlantic white-sided dolphins are not listed under the Endangered Species Act, nor considered strategic under the MMPA.

Harbor Porpoises

Harbor porpoises have a wide and discontinuous range that includes the North Atlantic and North Pacific. In the western North Atlantic, harbor porpoises are found from Greenland to Cape Hatteras, North Carolina. Harbor porpoises in U.S. waters are divided into 10 stocks, based on genetics, movement patterns, and management. Any harbor porpoises encountered during the proposed survey activities would be part of the Gulf of Maine/Bay of Fundy stock which has an estimated abundance of 89,504 animals and a minimum population estimate of 60,970 (NMFS, 2009c). They congregate around the Gulf of Maine during summer months, but are otherwise dispersed along the east coast. No trend analyses exist for this species. Harbor porpoises are not listed under the Endangered Species Act nor considered strategic under the MMPA.

Gray Seals

Gray seals inhabit temperate and sub-arctic waters. They are found from Maine to Long Island Sound, live on remote, exposed islands, shoals, and unstable sandbars, and are the second most common pinniped along the U.S. Atlantic coast. Three major populations exist in eastern Canada, northwestern Europe, and the Baltic Sea. The western North Atlantic stock is equivalent to the eastern Canada population and ranges from New York to Labrador. Pupping occurs on land or ice from late December through mid-February with peaks in mid-January. Muskeget Island (located between Martha's Vineyard and Nantucket Island) and Monomoy Island (at the eastern limit of Nantucket Sound) are the only gray seal breeding colonies in the U.S. and the southernmost gray seal breeding colonies in the world. These breeding colonies are about 24 km (13 NM) and 14 km (7 NM) from the proposed project site, respectively. Gray seals presently use the islands as areas to give birth and raise their pups. There is no defined migratory behavior for gray seals, so a large portion of the population may be present in Nantucket Sound year-round. Some adults move north during spring and summer, out of Nantucket Sound to the waters off Maine and Canada, but others have been observed in high abundance in Chatham Harbor, MA and other areas of lower Cape Cod during this time.

Incidental observations of seals were recorded during avian aerial surveys conducted independently by Cape Wind Associates and the Massachusetts Audubon Society. Between May 2002 and February 2004, Cape Wind Associates conducted about 46 aerial avian surveys in Nantucket Sound, with particular focus on Horseshoe Shoal. During this time, about 26,873 seals were observed throughout Nantucket Sound; about 56 of these were observed within the proposed project area over the three-year period. Current population numbers for the western North Atlantic stock are unknown, but are estimated at over 250,000 animals. Gray seal numbers are increasing in coastal waters between southern Massachusetts and eastern Long Island. Their abundance is likely increasing throughout the western Atlantic, but the rate of increase is unknown. Gray seals are not listed under the Endangered Species Act, nor considered strategic under the MMPA.

Harbor Seals

Harbor seals, also known as common seals, are found throughout coastal waters of the Atlantic Ocean and considered the most abundant pinniped on the U.S. east coast. The best available estimate for the harbor seal population along the New England coast is 99,340 (NMFS, 2009f). They are most common around coastal islands, ledges, and sandbars above 30° N latitude and range from the Arctic down to Nantucket Sound. Harbor seals are seasonal visitors to Massachusetts; breeding and pupping occur through the spring and summer in Maine and Canada. Harbor seals typically over-winter in Massachusetts, but some remain in southern New England year-round. No pupping areas have been identified in southern New England. Extensive sand spits off Muskeget Island and neighboring Tuckernuck and Skiff Islands have been identified as preferred haul-out spots for large numbers of harbor seals.

Harbor seal abundance estimates for Nantucket Sound are scarce. Barlas (1999) observed harbor seals on Cape Cod from October through April and saw abundance peak in March, with very few individuals using haul-out sites in Nantucket Sound. Waring (unpublished data, 2002) observed an increased abundance of harbor seals on Muskeget Island, Monomoy Island, and Tuckernuck Island in 1999 and 2000; however, harbor seals are not likely to be in the same area when gray seals are breeding.

Potential Effects on Marine Mammals

Use of subbottom profilers on Horseshoe Shoal may temporarily impact marine mammal behavior within the survey area due to elevated in-water sound levels. Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (for example, snapping shrimp, whale songs) are widespread throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels of sound depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to sound are likely dependent on a variety of factors including, but not limited to, (1) The behavioral state of the animal (for example, feeding, traveling, etc.); (2) frequency of the sound; (3) distance between the animal and the source; and (4) the level of the sound relative to ambient conditions (Southall *et al.,* 2007).

For background, sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while 20 dB is 100 times more intense, and 30 dB is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 μPa'' and ''re: 1 μPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring

all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Cetaceans are divided into three functional hearing groups: Low-frequency, mid-frequency, and high-frequency. Minke whales are considered low-frequency cetaceans and their estimated auditory bandwidth (lower to upper frequency hearing cut-off) ranges from 7 Hz to 22 kHz. Atlantic white-sided dolphins are considered mid-frequency cetaceans and their estimated auditory bandwidth ranges from 150 Hz to 160 kHz. Lastly, harbor porpoises are considered high-frequency cetaceans and their estimated auditory bandwidth ranges from 200 Hz to 180 kHz. In contrast, pinnipeds are divided into two functional hearing groups: In water and in air. Pinnipeds in water have an estimated auditory bandwidth of 75 Hz to 75 kHz. There are no pinniped haul-outs close enough to the survey area to take in air auditory bandwidths into consideration.

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥40 dB (that is, 40 dB of TTS). PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain issues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). Due to proposed mitigation measures and source levels, NMFS does not expect marine mammals to be exposed to PTS levels during the proposed survey activities.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to days, but is recoverable. TTS also occurs in specific frequency ranges; therefore, an animal might experience a temporary loss of hearing sensitivity only between the frequencies of 1 and 10 kHz, for example. The amount of change in hearing sensitivity is also variable and could be reduced by 6 dB or 30 dB, for example. Recent literature highlights the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts (Mooney *et al.,* 2009a, 2009b; Kastak *et al.,* 2007). Generally, with sound exposures of equal energy, quieter sounds (lower SPL) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration (more similar to subbottom profilers). For intermittent sounds, less threshold shift will occur than from a continuous exposure with the same energy (some recovery will occur between intermittent exposures) (Kryter *et al.,* 1966; Ward, 1997). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends. Southall *et al.* (2007) considers a 6 dB TTS (that is, baseline thresholds are elevated by 6 dB) to be a sufficient definition of TTS-onset. NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider TTS-onset to be the lowest level at which Level B harassment may occur. Southall *et al.* (2007) summarizes underwater pinniped data from Kastak *et al.* (2005), indicating that a tested harbor seal showed a TTS of around 6 dB when exposed to a nonpulse noise at sound pressure level 152 dB re: 1 μPa for 25 minutes. There is no information on species-specific TTS for harbor porpoises, minke whales, Atlantic white-sided dolphins, or gray seals; published data on the onset of TTS are limited to the captive bottlenose dolphin and beluga (Finneran *et al.,* 2000, 2002b, 2005a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004).

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. An animal's perception of and response to (in both nature and magnitude) an acoustic event can be influenced by prior experience, perceived proximity, bearing of the sound, familiarity of the sound, etc. (Southall *et al.,* 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of activities and/or exposed to a particular level of sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The studies that address responses of low-frequency cetaceans (such as the minke whale) to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to chirps), including: Vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts, or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans (such as Atlantic white-sided dolphins) to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps) including: pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic harassment devices (AHDs), Acoustic Deterrent Devices (ADDs), mid-frequency active sonar, and non-pulse bands and tones. Southall *et al.* (2007) were unable to come to a clear

conclusion regarding the results of these studies. In some cases animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high-frequency cetaceans (such as the harbor porpoise) to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps), including: pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (around 90 to 120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies.

The studies that address the responses of pinnipeds in water to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps), including: AHDs, various non-pulse sounds used in underwater data communication, underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggest that exposures to non-pulse sounds between 90 and 140 dB generally do not result in strong behavioral responses of pinnipeds in water, but no data exist at higher received levels (Southall *et al.,* 2007).

Southall *et al.* (2007) also addressed behavioral responses of marine mammals to impulse sounds. The studies that address the responses of low-frequency cetaceans to impulse sounds include data gathered in the field and related to two sound sources: airguns and explosions. The onset of significant behavioral disturbance varied between 120 and 160 dB, depending on species. The studies that address the responses of mid-frequency cetaceans to impulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to boomers), including: small explosives, airgun arrays, pulse sequences, and natural and artificial pulses. The data show no clear indication of increasing probability and severity of response with increasing received level. Behavioral responses seem to vary depending on species and stimuli. Data on behavioral responses of high-frequency cetaceans to multiple pulses is not available. Although individual elements of some non-pulse sources (such as pingers) could be considered pulses, it is believed that some mammalian auditory systems perceive them as non-pulse sounds (Southall *et al.,* 2007).

The studies that address the responses of pinnipeds in water to impulse sounds include data gathered in the field and related to several different sources (of varying similarity to boomers), including: small explosives, impact pile driving, and airgun arrays. Quantitative data on reactions of pinnipeds to impulse sounds is limited, but a general finding is that exposures in the 150 to 180 dB range generally have limited potential to induce avoidance behavior (Southall *et al.,* 2007).

Any impacts to marine mammal behavior are expected to be temporary. Animals may avoid the area around the survey vessels, thereby reducing exposure. Any disturbance to marine mammals is likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the survey location. In addition, because protected species observers would be monitoring a 500-m exclusion zone (much larger than the 30-m, 180-dB isopleth in which Level A harassment could occur), marine mammal injury or mortality is not anticipated. The protected species observers would be on watch to stop survey activities, a mitigation measure designed to prevent animals from being exposed to injurious level sounds. For these reasons, any changes to marine mammal behavior are expected to be temporary and result in a negligible impact to affected species and stocks.

Anticipated Effects on Marine Mammal Habitat

There is no anticipated impact on marine mammal habitat from the proposed survey activities. The high resolution geophysical survey equipment would not come in contact with the seafloor and would not be a source of air or water pollution. Marine mammals may avoid the survey area temporarily due to ensonification, but survey activities are not expected to result in long-term abandonment of marine mammal habitat. A negligible area of seafloor would be temporarily disturbed during the collection of geotechnical data.

Overall, the proposed activity is not expected to cause significant impacts on marine mammal habitat or marine mammal prey species in the proposed survey area. Therefore, NMFS has preliminarily determined impacts to marine mammal habitat are negligible.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses where relevant.

Cape Wind Associates proposed, with NMFS' guidance, the following mitigation measures to help ensure the least practicable adverse impact on marine mammals:

Establishment of an Exclusion Zone

During all survey activities involving the shallow-penetration and medium-penetration subbottom profilers, Cape Wind Associates would establish a 500-m radius exclusion zone around each survey vessel. This area would be monitored for marine mammals 60 minutes (as stipulated by the BOEMRE lease) prior to starting or restarting surveys, and during surveys, to ensure that no marine mammals are exposed to injurious levels of sound. Monitoring would also continue for 60 minutes after survey equipment has been turned off.

Shut Down and Delay Procedures

If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to the start of surveying, the observer would notify the appropriate individual who would then be required to delay surveying until the marine mammal moves outside of the exclusion zone or if the animal has not been resighted for 60 minutes.

Soft-Start Procedures

A ''soft-start'' technique would be used at the beginning of each survey to allow any marine mammal that may be in the immediate area to leave before the sound sources reach full energy.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable

adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Cape Wind Associates must designate at least one biologically-trained on-site individual, approved in advance by NMFS to monitor the area for marine mammals 60 minutes before, during, and 60 minutes after all survey activities and call for shut down if any marine mammal is observed within or approaching the designated 500-m exclusion zone. Should a marine mammal not included in an incidental take authorization be observed at any time within the 500-m exclusion zone, shut down and delay procedures would be followed. Cape Wind Associates would also provide additional monitoring efforts that would result in increased knowledge of marine mammal species in Nantucket Sound. At least one NMFS-approved protected species observer would conduct behavioral monitoring from the survey vessel at least twice a week to estimate take and evaluate the behavioral impacts that survey activities have on marine mammals outside of the 500-m exclusion zone. In addition, Cape Wind Associates would also send out an additional vessel with a NMFS-approved protected species observer to collect data on species presence and behavior before surveys begin and once a month during survey activities.

Protected species observers would be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, compass, and range-finder) in order to determine if animals have entered into the harassment isopleths and to record species, behaviors, and responses to survey activity. These observers would be required to submit a report to NMFS within 120 days of expiration of the IHA or completion of surveying, whichever comes first. The report would include data from marine mammal sightings (for example, species, group size, behavior), any observed reactions to survey activities, distance between marine mammals and the vessel, and sound sources operating at time of sighting.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on Cape Wind Associates' application and NMFS' subsequent analysis, the impact of the described survey activities may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid the area or change their behavior at time of exposure.

Current NMFS practice regarding exposure of marine mammals to anthropogenic sound is that in order to avoid the potential for injury of marine mammals (for example, PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB re: 1 μPa or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB re: 1 μPa for impulse sounds and 120 dB re: 1 μPa for non-pulse noise, but below the aforementioned thresholds. These levels are also considered precautionary.

Cape Wind Associates estimated the number of potential takes resulting from survey activities by considering species density, the zone of influence, and duration of survey activities. More specifically, take estimates were calculated by multiplying the estimated species density values (n) measured in individuals per square kilometers, by the area of the zone of influence in square kilometers, times the total number of survey days (d = 137). The zone of influence was calculated as a function of the distance a survey vessel with deployed boomer would travel in one survey day and the area around the boomer where sound levels reach or exceed 160 dB.

Estimated numbers of species potentially exposed to disturbing levels of sound from the boomer (the survey equipment with the largest 160 dB isopleth) were calculated for minke whales, Atlantic white-sided dolphins, harbor porpoises, gray seals, and harbor seals. These estimates were calculated by multiplying the low and high end of the ranges of species density by the boomer's zone of influence and the number of days of survey operation. To be conservative, Cape Wind Associates is requesting incidental take based on the highest estimated possible species exposures to potentially disturbing levels of sound from the boomer. No marine mammals are expected to be exposed to injurious levels of sound in excess of 180 dB during survey activities. Cape Wind Associates is requesting, and NMFS is proposing, Level B harassment of 11 minke whales, 231 Atlantic white-sided dolphins, 138 harbor porpoises, 398 gray seals, and 99 harbor seals. These numbers are conservative because the highest density estimates were used and mitigation measures (such as the 500-m exclusion zone, marine mammal monitoring, and ramp up procedures) were not considered. These numbers indicate the maximum number of animals expected to occur within the largest Level B harassment isopleth (444 m). Estimated and proposed level of take of each species is less than one percent of each affected stock and therefore is considered small in relation to the stock estimates previously set forth.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified

activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur (for instance, will the takes occur in an area or time of significance for marine mammals, or are takes occurring to a small, localized population?).

As described above, marine mammals would not be exposed to activities or sound levels which would result in injury (for instance, PTS), serious injury, or mortality. Anticipated impacts of survey activities on marine mammals are temporary behavioral changes due to avoidance of the area. All marine mammals in the vicinity of survey operations would be transient as no breeding, calving, pupping, nursing, or haul-outs overlap with the survey area. The closest pinniped haul-outs are 23.5 km (12.7 NM) and 13.7 km (7.4 NM) away on Monomoy Island and Muskeget Island, respectively. Marine mammals approaching the survey area would likely be traveling or opportunistically foraging. The amount of take Cape Wind Associates requested, and NMFS proposes to authorize, is considered small (less than one percent) relative to the estimated populations of 8,987 minke whales, 63,368 Atlantic white-sided dolphins, 89,504 harbor porpoises, 250,000 gray seals, and 99,340 harbor seals. No affected marine mammals are listed under the ESA or considered strategic under the MMPA. Marine mammals are expected to avoid the survey area, thereby reducing exposure and impacts. No disruption to reproductive behavior is anticipated and there is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily determines that Cape Wind Associate's survey activities would result in the incidental take of small numbers of marine mammals, by Level B harassment, and that the total taking would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are anticipated to occur within the action area. Therefore, section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS is preparing an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of a one-year IHA and the potential issuance of additional authorization for incidental harassment for the ongoing project. Upon completion, this EA will be available on the NMFS Web site listed in the beginning of this document.

Dated: September 8, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–23575 Filed 9–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA700

Mid-Atlantic Fishery Management Council; Workshop

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

ACTION: Notice of a workshop.

SUMMARY: The Eight Regional Fishery Management Councils will convene a workshop of representatives of their respective Scientific and Statistical Committees (SSCs) to examine the approaches being taken around the United States by the Council SSCs in addressing Ecosystems Based Fishery Management (EBFM) issues from biological, economic and social perspectives.

DATES: The workshop will be held Tuesday, October 4 through Thursday, October 6, 2011.

ADDRESSES: The workshop will be held at the Kingsmill Conference Center, 1010 Kingsmill Road, Williamsburg, VA 23185; telephone: (800) 832–5665.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Richard Seagraves at the Mid-Atlantic Fishery Management Council, telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The Magnuson Stevens Fishery Conservation and Management Act (MSA) requires that each Council maintain and utilize its SSCs to assist in the development, collection, evaluation, and peer review of information relevant to the development and amendment of fishery management plans (FMPs). In addition, the MSA mandates that each SSC shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

At its January 2011 meeting, the Council Coordination Committee (a group consisting of the leadership from the eight Regional Fishery Management Councils), recommended that a fourth National SSC Workshop be convened to address ecosystem considerations in the fishery management process as well as to examine how social and economic considerations can be incorporated in both traditional single species and ecosystem based fishery management. Therefore, the purpose of this workshop is to examine the approaches being taken around the United States by the Council SSCs in addressing Ecosystems Based Fishery Management (EBFM) issues from biological, economic and social perspectives.

Proposed agenda items are as follows:

Tuesday, October 4, 2011; 8:30 a.m.—Keynote speaker Dr. Tony Smith CSIRO Australia; 9:30 a.m.—Status report from each SSC on approaches being taken to implement ABCs and providing advice to the Councils on implementing ecosystem based fishery management approaches and the role of social science and economics in the SSC Process; 1:15 p.m.—Plenary Session 1: Broader Context and Tradeoffs/

Integrated Ecosystem Assessments; 5 p.m.—Adjourn Day 1.

Wednesday, October 5, 2011 the Workshop will split into two break-out sessions; Ecosystems Breakout: 8:30 a.m.—OFL–ACL continuum; 11 a.m.—Forage species discussion; 2 p.m.—Ecosystems goals and objectives; Social and Economics Breakout: 8:30 a.m.—Role of Social Science in SSC deliberations; 11 a.m.—Role of SSC in providing scientific advice on catch shares; 1 p.m.—Procedural/data issue; 3 p.m.—Recommendations. At 4:30 p.m. the workshop will reconvene in Plenary to discuss results of Breakout Sessions; 5 p.m.—Adjourn Day 2.

Thursday, October 6, 2011; 8:30 a.m.—Continue Plenary discussion of Day 2 breakout sessions; 1 p.m. Develop specific recommendations to Council Coordination Committee; 3:30 p.m. Adjourn.

The agenda items are subject to change, the latest version will be posted at *http://www.fisherycouncils.org.*

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the *Magnuson-Stevens Fishery Conservation and Management Act* (*Magnuson-Stevens Act*), those issues may not be the subject of formal action during the workshop. 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 Act,* provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at (302) 526–5251 at least 5 days prior to the workshop dates.

Dated: September 9, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–23461 Filed 9–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces; Meeting

AGENCY: Department of Defense, Office of the Assistant Secretary of Defense.

ACTION: Notice.

SUMMARY: Under the provisions of the *Federal Advisory Committee Act of 1972* (5 U.S.C., Appendix, as amended), the *Government in the Sunshine Act of 1976* (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory Committee meeting will take place: Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (subsequently referred to as the Task Force).

DATES: Tuesday, October 4, 2011–Wednesday, October 5, 2011, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: Crystal City Hyatt Regency, 2799 Jefferson Davis Highway, Arlington, VA 22202, Regency E Ballroom.

FOR FURTHER INFORMATION CONTACT: Mail Delivery service through Recovering Warrior Task Force, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–0021 ''Mark as Time Sensitive for October Meeting''. E-mails to *rwtf@wso.whs.mil.* Denise F. Dailey, Designated Federal Officer; Telephone (703) 325–6640. Fax (703) 325–6710.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is for the Task Force Members to receive briefings on a number of the topic areas listed in the Task Force Charter and to discuss the year's installation visits and business meetings.

Agenda: (Please refer to *http://dtf.defense.gov/rwtf/meetings.html* for the most up-to-date meeting information).

Open to the Public

Tuesday, October 4, 2011

8:30 a.m. Task Force Members After Action Review of FY 2011.
9:30 a.m. Break.
9:45 a.m. Dr. Bernie Rostker.
10:45 a.m. Break.
11 a.m. Veteran's Rehabilitation and Employment.
12 p.m. Break for lunch located in Potomac 4.
1 p.m. Armed Forces Health Surveillance Center.
2 p.m. Break.
2:15 p.m. Quality of Life Foundation.
3:15 p.m. National Military Family Association.
4:15 p.m. Task Force Installation Visit Review.
5 p.m. Closing.

Wednesday, October 5, 2011

8:30 a.m. Public Forum.
9 a.m. Wounded Warrior Care and Transition Policy.
10 a.m. Open.
11 a.m. Open.
12 p.m. Break for lunch located in Potomac 4.
1 p.m. Health Affairs.
2 p.m. Gray Team Briefing on TBI management in the Theater.
3 p.m. Department of Labor.
4 p.m. Open.
5 p.m. Closing.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces about its mission and functions. If individuals are interested in making an oral statement during the Public Forum time period, a written statement for a presentation of two minutes must be submitted as below and must identify it is being submitted for an oral presentation by the person making the submission. Identification information must be provided and at a minimum must include a name and a phone number. Individuals may visit the Task Force Web site at *http://dtf.defense.gov/rwtf/* to view the Charter. Individuals making presentations will be notified by Friday, September 30, 2011. Oral presentations will be permitted only on Wednesday, October 5, 2011 from 8:30 a.m. to 9 a.m. before the full Task Force. Number of oral presentations will not exceed ten, with one minute of questions available to the Task Force members per presenter. Presenters should not exceed their two minutes.

Written statements in which the author does not wish to present orally may be submitted at any time or in response to the stated agenda of a planned meeting of the Department of Defense Task Force on the Care,

Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Task Force through the above contact information, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements, either oral or written, being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed no later than 5 p.m. Eastern Daylight Time (EDT), Wednesday, September 28, 2011 which is the subject of this notice. Statements received after this date may not be provided to or considered by the Task Force until its next meeting. Please mark mail correspondence as ''Time Sensitive for October Meeting.''

The Designated Federal Officer will review all timely submissions with the Task Force Co-Chairs and ensure they are provided to all members of the Task Force before the meeting that is the subject of this notice.

Reasonable accommodations will be made for those individuals with disabilities who request them. Requests for additional services should be directed to Heather Jane Moore, (703) 325–6640, by 5 p.m. EDT, Wednesday, September 28, 2011.

Dated: September 9, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23483 Filed 9–13–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0098]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, Department of Defense (DoD).

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment; however, this notification will be completed by DoD, the matching agency. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between the Social Security Administration (SSA) and DoD Defense Manpower Data Center (DMDC) that their records are being matched by computer. The purpose of this agreement is to verify applicants for, and recipients of Supplement Security Income (SSI) payments and Special Veterans Benefits (SVB) with respect of determination of eligibility and calculating payment amounts.

DATES: This proposed action will become effective October 14, 2011 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

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, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350–3100.

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: Any interested party may submit written comments to Mr. Samuel P. Jenkins, Director, Defense Privacy and Civil Liberties Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512, or by telephone at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD DMDC and SSA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this agreement is to verify eligibility of individual's of Supplemental Security Income (SSI) payments and the entitlement of individuals to Special Veterans Benefits (SVB).

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining the information needed by the SSA under the Social Security Act to verify the eligibility/entitlement of and to verify payment/benefit amounts for certain SSI and SVB recipients/ beneficiaries. Conducting such a manual match would impose a considerable administrative burden, constitute a greater intrusion of the individual's privacy and would result in additional delay in the eventual SSI payment and SVB benefit recovery of unauthorized or erroneous payment, and not all individuals would be identified. A copy of the computer matching agreement between SSA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on September 9, 2011, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals,'' February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 9, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Social Security Administration and the Department of Defense for Verification of Social Security Supplemental Security Income Payments and Special Veterans Benefits

A. Participating Agencies:

Participants in this computer matching program are the Social Security Administration (SSA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The SSA

is the source agency, *i.e.,* the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, *i.e.,* the agency that actually performs the computer matching.

B. Purpose of the Match: The Social Security Act requires SSA to verify, with independent or collateral sources, information provided to SSA by recipients of SSI payments and beneficiaries of SVB benefits. The SSI and SVB recipient/beneficiaries provides information about eligibility/entitlement factors and other relevant information. SSA obtains additional information as necessary before making any determinations of eligibility/payment or entitlement/benefit amounts or adjustments thereto. With respect to military retirement payments to SSI recipients and SVB beneficiaries who are retired members of the Uniformed Services or their survivors, SSA proposes to accomplish this task by computer matching with the DOD.

C. Authority for Conducting the Match: This CMA is executed to comply with the Privacy Act of 1974 (section 552a of title 5 United States Code (U.S.C.), as amended, (as amended by Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Circular A–130, titled ''Management of Federal Information Resources'' at 61 **Federal Register** (FR) 6435, February 20, 1996 and OMB guidelines pertaining to computer matching at 54 FR 25818, June 1989. The legal authority for this exchange is sections 806(b) and 1631(e)(1)(B)(f) of the Act (42 U.S.C. 1006(b) and 1383(e)(1)(B)(f)). SSA's legal authority to disclose data to DoD/Defense Manpower Data Center (DMDC) is section 1106(a) of the Act (42 U.S.C. 1306(a)) and the Privacy Act (5 U.S.C. 552a(b)(3)).

D. Records To Be Matched: The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

SSA will use records from a system of records identified as 60–0103, entitled ''Supplemental Security Income Record and Special Veterans Benefits, SSA/ODSSIS,'' last published in the **Federal Register** at 71 FR 1830, January 11, 2006. Disclosure of data will be pursuant to Routine Use (RU) number 3 and 19.

DoD will use the system of records identified as DMDC 01, entitled, ''Defense Manpower Data Center Data Base'', published 74 FR 39666 (August 17, 2009). Disclosure of DMDC data will be pursuant to Routine Use Number 5b.

E. Description of Computer Matching Program: SSA, as the source agency, will provide DMDC with an electronic file which contains the data elements. Upon receipt of the electronic file, DMDC, as the recipient agency, will perform a computer match using all nine digits of the SSN of the SSI/SVB file against a DMDC database which contains the data elements. The DMDC database consists of extracts of personnel and pay records of retired members of the uniformed services or their survivors. The ''hits'' or matches will be furnished to SSA. SSA is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the SSA source file and resolving any discrepancies or inconsistencies on an individual basis. SSA will also be responsible for making final determinations as to eligibility for/entitlement to, or amount of payments/benefits, their continuation or needed adjustments, or any recovery of overpayments as a result of the match.

1. The electronic file provided by SSA will contain approximately 9.5 million records extracted from the SSR/SVB.

2. The electronic DMDC database contains records on approximately 2.4 million retired uniformed service members or their survivors.

F. Inclusive Dates of the Matching Program: This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement between SSA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for Receipt of Public Comments or Inquiries: Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. 2011–23509 Filed 9–13–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

The following are available for licensing: Navy Case No. 100033: Nonlinear Channelizer Device with Wideband, High Frequency Operation and Channel Reconfigurability; Navy Case No. 100992: Time domain tunneling switched multi-axial gyroscope with independent acceleration measurement; Navy Case No. 100993: In-plane, six degree of freedom inertial device with integrated clock; Navy Case No. 101027: Magnetic Wheel; Navy Case No. 101298: Auto ranging for time domain inertial sensor; Navy Case No. 101330: Tuning fork gyroscope time domain inertial sensor; U.S. Patent Application No. 12/175262: Coupled Electric Field Sensors for DC Target Electric Field Detection; U.S. Patent Application No. 12/732023: Coupled Bi-Stable Microcircuit System for Ultra-Sensitive Electrical and Magnetic Field Sensing; U.S. Patent Application No. 12/749338: Coupled Bi-Stable Circuit for Ultra-Sensitive Electric Field Sensing Utilizing Differential Transistors Pairs.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2305, San Diego, CA 92152–5001, telephone 619–553–5118, E-Mail: *brian.suh@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: September 6, 2011.

L.M. Senay,

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

[FR Doc. 2011–23469 Filed 9–13–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 14, 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: September 9, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title of Collection: Transition and Postsecondary Programs for Students with Intellectual Disabilities Evaluation System.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions.

Total Estimated Number of Annual Responses: 58.

Total Estimated Number of Annual Burden Hours: 1,087.

Abstract: In October 2010, the Office of Postsecondary Education (OPE) awarded 27 institutes of higher education (IHE) grants to fund the creation of Transition Programs for Students with Intellectual Disabilities (TPSIDs) (model demonstrations) in 23 states.

OPE also awarded a grant to the Institute for Community Inclusion at the University of Massachusetts Boston to fund a coordinating center to support these TPSID grantees as well as other programs around the country that are working to transition students with cognitive disabilities into higher education. One of the Coordinating Center's roles is to develop an evaluation system for the TPSID programs. The proposed data collection system is part of that evaluation effort and involves establishment of a uniform dataset across the initial 27 sites (and potentially up to 31 additional IHEs) to ensure consistency in collection of information comprised by the previously listed 11 Government Performance and Results Act measures. The system will collect program data at the institution and individual level from TPSID program staff via an online, secure, data management system.

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 4706. 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. 2011–23547 Filed 9–13–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–2554–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: Transwestern Pipeline Company, LLC submits tariff filing per 154.402: TW_ACA_2011_Filing to be effective 10/1/2011.

Filed Date: 09/02/2011.

Accession Number: 20110902–5086.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 14, 2011.

Docket Numbers: RP11–2555–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc. Notice of Termination of Negotiated Rate Agreement with Empire District Electric Co.

Filed Date: 09/02/2011.

Accession Number: 20110902–5111.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 14, 2011.

Docket Numbers: RP11–2556–000.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits tariff filing per 154.601: Permanent Assignment DOMAC to GDF SUEZ Negotiated Rate to be effective 10/1/2011.

Filed Date: 09/02/2011.

Accession Number: 20110902–5139.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 14, 2011.

Docket Numbers: RP11–2557–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc., Petition for Waiver of Missed Capacity Release Bidding Deadlines.

Filed Date: 09/02/2011.

Accession Number: 20110902–5153.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 14, 2011.

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.

Filings in Existing Proceedings

Docket Numbers: RP11–2443–001.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits tariff filing per 154.205(b): ACA Errata 2011 to be effective 10/1/2011.
Filed Date: 09/02/2011.
Accession Number: 20110902–5041.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 14, 2011.

Docket Numbers: RP11–2533–001.
Applicants: MIGC LLC.
Description: MIGC LLC submits tariff filing per 154.205(b): MIGC LLC Amended 2011 ACA Filing to be effective 10/1/2011.
Filed Date: 09/02/2011.
Accession Number: 20110902–5117.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 14, 2011.

Docket Numbers: RP11–2356–001.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits tariff filing per 154.203: 2011 September 6 Compliance to be effective 9/1/2011.
Filed Date: 09/06/2011.
Accession Number: 20110906–5155.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Docket Numbers: RP11–2503–001.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits tariff filing per: ACA Correction 2 to be effective N/A.
Filed Date: 09/06/2011.
Accession Number: 20110906–5039.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service 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: September 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–23403 Filed 9–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–113–000.
Applicants: Entergy Mississippi, Inc., Entergy Arkansas, Inc., KGEN Hinds LLC, KGen Hot Spring LLC.
Description: Entergy Mississippi, Inc et al submits a Joint Application for Order Authorizing Acquisition and Disposition of Jurisdictional Assets under Section 203 of the Federal Power Act.
Filed Date: 08/31/2011.
Accession Number: 20110901–0201.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3735–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. Response to Deficiency Letter.
Filed Date: 08/25/2011.
Accession Number: 20110825–5125.
Comment Date: 5 p.m. Eastern Time on Thursday, September 15, 2011.

Docket Numbers: ER11–4266–001.
Applicants: Richland-Stryker Generation LLC.
Description: Richland-Stryker Generation LLC submits tariff filing per 35.17(b): Amended Richland-Stryker MBR to be effective 9/26/2011.
Filed Date: 09/02/2011.
Accession Number: 20110902–5118.
Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4434–000.
Applicants: Ally Energy, LLC.
Description: Ally Energy, LLC submits tariff filing per 35.15: Cancellation of MBR Tarriff to be effective 9/3/2011.
Filed Date: 09/02/2011.
Accession Number: 20110902–5116.
Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4435–000.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power, Inc. submits tariff filing per 35.15: Cancellation (Complete Tariff ID) to be effective 9/2/2011.
Filed Date: 09/02/2011.
Accession Number: 20110902–5131.
Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4436–000.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power, Inc. submits tariff filing per 35.1: MBR Tariff Baseline to be effective 8/1/2010.
Filed Date: 09/02/2011.
Accession Number: 20110902–5135.
Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4437–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: LGIP reforms developed through WestConnect stakeholder process to be effective 11/1/2011.
Filed Date: 09/02/2011.
Accession Number: 20110902–5137.
Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4438–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits tariff filing per 35.13(a)(2)(iii: SDG&E and Cogentrix Energy E&P Agreement to be effective 9/2/2011.
Filed Date: 09/02/2011.
Accession Number: 20110902–5138.
Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4441–000.
Applicants: Nevada Power Company.
Description: Nevada Power Company Cancellation of FERC Electric Rate Schedule No. 45—an Agreement with Metropolitan Water District of Southern California.
Filed Date: 09/02/2011.
Accession Number: 20110902–5151.
Comment Date: 5 p.m. Eastern Time on Friday, September 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: September 06, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–23406 Filed 9–13–11; 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: EC11–114–000.

Applicants: Mississippi Power Company.

Description: Mississippi Power Company submits application for the approval of the purchase of existing generation facilities.

Filed Date: 09/02/2011.

Accession Number: 20110906–0202.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4439–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Amend Standard LGIA Desert Sunlight Project to be effective 9/7/2011.

Filed Date: 09/06/2011.

Accession Number: 20110906–5000.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 2011.

Docket Numbers: ER11–4440–000.

Applicants: KAP Analytics, LLC.

Description: KAP Analytics, LLC submits tariff filing per 35.12: KAP Analytics, LLC FERC Electric MBR Tariff to be effective 10/1/2011.

Filed Date: 09/06/2011.

Accession Number: 20110906–5001.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 2011.

Docket Numbers: ER11–4442–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc. submits tariff filing per 35.13(a)(2)(iii: Amendment to add MISO/PJM Riders to be effective 1/1/2012.

Filed Date: 09/06/2011.

Accession Number: 20110906–5040.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 2011.

Docket Numbers: ER11–4443–000.

Applicants: AK Electric Supply, LLC.

Description: AK Electric Supply, LLC submits tariff filing per 35.1: AK Steel MBR to be effective 9/6/2011.

Filed Date: 09/06/2011.

Accession Number: 20110906–5096.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 2011.

Docket Numbers: ER11–4444–000.

Applicants: Magnolia Energy LP.

Description: Magnolia Energy LP submits tariff filing per 35.15: Cancellation of Market-Based Rate Tariff to be effective 9/7/2011.

Filed Date: 09/06/2011.

Accession Number: 20110906–5131.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 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: September 06, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–23405 Filed 9–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

September 8, 2011.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 15, 2011, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

973RD—Meeting

Regular Meeting

September 15, 2011; 10 a.m.

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	OMITTED.	
A–4	AD11–9–000	Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1–5, 2011.
	Electric	
E–1	RM11–11–000	Version 4 Critical Infrastructure Protection Reliability Standards.
E–2	OMITTED.	

Item No.	Docket No.	Company
E–3	RM08–13–004	Transmission Relay Loadability Reliability Standard.
E–4	RM10–6–000	Interpretation of Transmission Planning Reliability Standard.
E–5	RM10–29–000	Electric Reliability Organization Interpretation of Transmission Operations Reliability Standard.
E–6	RM11–16–000	Transmission Relay Loadability Reliability Standard.
E–7	RD11–7–000	North American Electric Reliability Corporation.
E–8	ER11–3970–000	Midwest Independent Transmission System Operator, Inc.
E–9	TS11–5–000	Bangor Hydro Electric Company.
E–10	ER11–3967–000	Southwest Power Pool, Inc.
E–11	ER11–3064–001	PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company.
E–12	ER11–3972–000	PJM Interconnection, L.L.C.
E–13	ER11–3953–000	ISO New England Inc. and New England Power Pool.
E–14	ER11–2224–004	New York Independent System Operator, Inc.
	ER11–2224–005	
	ER11–2224–009	
E–15	ER11–3949–000	New York Independent System Operator, Inc.
	ER11–3949–001	
	ER11–3951–000	
E–16	ER11–3973–000	California Independent System Operator Corporation.
E–17	EL11–12–002	Idaho Wind Partners 1, LLC.
	Gas	
G–1	RM11–4–000	Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies.
	Hydro	
H–1	P–2698–050	Duke Energy Carolinas, LLC.
	P–2686–062	
H–2	P–13681–002	Grand Coulee Project Hydroelectric Authority.
H–3	DI10–9–001	Woodland Pulp LLC.
	Certificates	
C–1	CP11–30–000	Tennessee Gas Pipeline Company.
	CP11–41–000	Dominion Transmission, Inc.
C–2	CP10–510–000	El Paso Natural Gas Company.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23641 Filed 9–12–11; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–51–000]

Northern Laramie Range Alliance; Notice of Petition for Declaratory Order

Take notice that on July 12, 2011, Northern Laramie Range Alliance filed a Petition for Declaratory Order, requesting the Federal Energy Regulatory Commission (Commission) issue an order declaring that two Form 556 self certifications filed under the names Pioneer Wind Park I and Pioneer Wind Park II are void and without effect.

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. 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 26, 2011.

Dated: August 29, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–23404 Filed 9–13–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0489; FRL–9463–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; Air Emissions Reporting Requirements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on April 30, 2012. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0489, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air Emissions Reporting Requirements, Docket No. EPA–HQ–OAR–2004–0489, Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2004–0489, EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0489. The 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 the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Kimberly D. Paylor, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Mail Code C339–02, Research Triangle Park, NC 27711; *telephone:* (919) 541–5474, e-mail: *paylor.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0489, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket and Information Center, EPA/DC, EPA East Building Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is the EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25 people) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No. EPA–HQ–OAR–2004–0489.

Affected entities: Entities potentially affected by this action are generally State, territorial and local government air quality managements programs. Tribal governments are not affected unless they have sought and obtained treatment as state status under the Tribal Authority Rule and on that basis, are authorized to implement and enforce the Air Emissions Reporting Requirements rule.

Title: Air Emissions Reporting Requirements (Renewal) .

ICR numbers: EPA ICR No.2170.03, OMB Control No. 2060–0580.

ICR status: This ICR is currently scheduled to expire on April 30, 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 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The EPA promulgated the Air Emissions Reporting Requirements (AERR) (40 CFR part 51 subpart A) to coordinate emissions inventory reporting requirements with existing requirements of the Clean Air Act and 1990 Amendments. Under this reporting, 55 State and Territorial air quality agencies, including the District of Columbia, as well as an estimated 49 local air quality agencies, must submit emissions data every three years for all point, non-point, on-road mobile, and non-road mobile sources of volatile organic compounds, oxides of nitrogen, carbon monoxide, sulfur dioxide, particulate matter less than or equal to 10 micrometers in diameter, particulate matter less than or equal to 2.5 micrometers in diameter, ammonia, and lead.

In addition, the air quality agencies must submit annually emission data for point sources emitting at greater than specified levels of those pollutants. The data supplied to the emission reporting requirement is needed so that the EPA can compile and make available a national inventory of air pollutant emissions. A comprehensive inventory updated at regular intervals is essential to allow the EPA to fulfill its mandate to monitor and plan for the attainment and maintenance of the national ambient air quality standards established for criteria pollutants.

This information is collected under 23 U.S.C. 101; 42 U.S.C 7401–7671q, and the authority of the AERR. This information is mandatory and, as specified, cannot be treated as confidential by the EPA.

The number and frequency of data collection and submittal is expected to remain the same for 2011–2014.

Burden: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 42 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 104.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 51,095.

Estimated total annual costs: $4,060,576. This includes an estimated burden cost of $4,060,576 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is no significant change of hours in the ICR currently approved by OMB.

What is the next step in the process for this ICR?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 8, 2011.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–23531 Filed 9–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0670; FRL–8886–4]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application 464–EUP–RNA from Dow Chemical Co. requesting an experimental use permit (EUP) for Dibromomalonamide. The Agency has determined that the permit may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before October 14, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0670 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–2011–0670 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, 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: Stacey Grigsby, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6440; e-mail address: *grigsby.stacey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. 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 pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 5 of FIFRA, 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: Dow Chemical Co., (464–EUP–RNA).

Pesticide Chemical: Dibromomalonamide.

Summary of Request: Evaluation for use in water treatment, pulp/paper processing, oil/gas and mineral slurries, and metal working fluid applications.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application as described under **ADDRESSES**.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 30, 2011.

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2011–23362 Filed 9–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0507; FRL–8888–2]

Formetanate HCl and Acephate; Cancellation Order for Amendments To Terminate; Product Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of products containing formetanate HCl and acephate, pursuant to section 6(f)(1) of the *Federal Insecticide, Fungicide, and Rodenticide Act* (FIFRA), as amended. This cancellation order follows a July 13, 2011 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily amend their formetanate HCl and acephate product registrations to delete uses. These are not the last products containing these pesticides registered for use in the United States. In the July 13, 2011 notice, EPA indicated that it would issue an order implementing the amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendments to terminate uses of formetanate HCl and acephate product registrations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The amendments are effective September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Formetanate HCL: James Parker, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (301) 306–0469; fax number: (703) 308–7070; e-mail address: *parker.james@epa.gov* .

Acephate: Kelly Ballard, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–8126; fax number: (703) 308–7070; e-mail address: *ballard.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0507. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the Agency taking?

This notice announces the amendments to delete uses, as requested by registrants, of products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—FORMETANATE HCL & ACEPHATE PRODUCT REGISTRATION AMENDMENTS TO DELETE USES

EPA registration No.	Product name	Uses deleted
10163–264	Formetanate Hydrochloride Technical	Apple, Peach & Pear.
10163–265	Carzol SP Miticide/Insecticide in Water Soluble Packaging	Apple, Peach & Pear.
WA010033	Carzol SP Insecticide in Water Soluble Packaging	Apple & Pear.
5481–8975	Orthene Technical	Succulent Green Beans.
70506–1	Acephate 75 Insecticide	Succulent Green Beans.
70506–2	Acephate 90 Insecticide	Succulent Green Beans.
70506–3	Acephate Technical	Succulent Green Beans.
70506–8	Acephate 97UP Insecticide	Succulent Green Beans.
70506–71	Acephate 90SP Manufacturing Use Product	Succulent Green Beans.
70506–76	Acephate 90DF Insecticide	Succulent Green Beans.
81964–1	Acephate Technical	Succulent Green Beans.
81964–3	Acephate 90% SP	Succulent Green Beans.
83558–35	Acephate Technical	Succulent Green Beans.
84229–7	Tide Acephate 90 WDG	Succulent Green Beans.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS OF AMENDED PRODUCTS

EPA company No.	Company name and address
5481	Amvac Chemical Corporation, 4695 MacArthur Ct., Suite 1250, Newport Beach, CA 92660.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569.
70506	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
81964	ChemStarr, LLC, 21 Hubble, Irvine, CA 92618.
83558	Makhteshim Agan of North America, Inc., 4515 Falls of Neuse Rd, Suite 300, Raleigh, NC 27609.
84229	Tide International, USA, Inc., 21 Hubble, Irvine, CA 92618.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the July 13, 2011 **Federal Register** notice (76 FR 41250) (FRL–8879–7) announcing the Agency's receipt of the requests for voluntary amendments to delete uses of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendments to terminate uses of formetanate HCl and acephate registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are amended to terminate the affected uses. The effective date of the cancellations that are subject of this notice is September 14, 2011. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on July 13, 2011. The comment period closed on August 15, 2011.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

Since the EPA has approved product labels reflecting the requested amendments to delete uses, formetanate HCl registrants will now be permitted to sell and distribute existing stocks of products under the previously approved labeling until November 30, 2011. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than the registrant may sell, distribute, or use existing stocks of products (including those of (24c) Special Local Needs registrations) whose labels include the deleted uses until December 31, 2013, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted uses.

Now that EPA has approved product labels reflecting the requested amendments to delete uses, acephate registrants are permitted to sell or distribute products listed in Table 1 of Unit II. under the previously approved labeling until March 14, 2013, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 7, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–23338 Filed 9–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0586; FRL–8887–6]

Petition Requesting Ban on Use and Production of Atrazine; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking public comment on a request from the environmental advocacy group Save the Frogs that EPA ban the use and production of atrazine.

DATES: Comments must be received on or before November 14, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0586, 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–2011–0586. 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:

Melanie Biscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–7106; *fax number:* (703) 308–8005; *e-mail address: biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, distribute, sell, or use pesticides; are an environmental, human health, or agricultural advocate; or are a general member of the public. Potentially affected entities may include, but are not limited to:

- Pesticide Manufacturers (NAICS code 325320), e.g., herbicides manufacturing.
- Pesticides, agricultural, merchant wholesalers and lawn care supplies merchant wholesalers (NAICS code 424910).
- Corn farming (NAICS codes 111150, 111219).
- Sorghum farming (NAICS code 111199).
- Sugarcane farming (NAICS code 111930).
- Environment, conservation, and wildlife organizations (NAICS code 813312).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the Agency taking?

EPA seeks public comment on a petition from environmental advocacy group Save the Frogs requesting that EPA ban the use and production of atrazine. This petition, available in EPA–HQ–OPP–2011–0586, was submitted on May 6, 2011 during a meeting with Save the Frogs founder Dr. Kerry Kriger. The presentation and participant list from the meeting is also available in docket EPA–HQ–OPP–2011–0586.

The Save the Frogs petition includes over 10,000 signatures; select statements from the public; and two brief summaries of published literature, one by Dr. Jason Rohr and one by Dr. Tyrone Hayes that is co-authored by 39 other scientists.

In conjunction with this petition, EPA received nearly 50,000 emails from supporters of the Center for Biological Diversity and the Natural Resources Defense Council requesting that EPA ''immediately take steps to phase out atrazine use in the United States,'' stating that atrazine poses an unreasonable risk to the environment. The emails express concern for impacts on amphibians and other aquatic species as well as concern for potential risks to human health.

Information on EPA's regulation of atrazine with regard to amphibians,

aquatic ecosystems and human health can be found on its atrazine Web page: *http://www.epa.gov/pesticides/reregistration/atrazine/atrazine_update.htm.*

The Agency asks that comments on the Save the Frogs petition's request to ban the use and production of atrazine be submitted to docket EPA–HQ–OPP–2011–0586 within 60 days. EPA will review all comments submitted before responding to the petition.

List of Subjects

Environmental protection, pesticides, and pests.

Dated: September 6, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–23516 Filed 9–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9463–3]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to resolve a lawsuit filed by the WildEarth Guardians (''Plaintiff'') in the United States District Court for the District of New Mexico: *WildEarth Guardians* v. *Jackson,* No. 1:11-cv-00461 (D. NM). Plaintiff's filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the New Mexico Environmental Department, Air Quality Bureau to the Public Service Company of New Mexico to operate the San Juan Generating Station. Under the proposed consent decree, EPA would agree to respond to the petition by February 15, 2012, or within 30 days after entry of the consent decree by the Court, whichever is later.

DATES: Written comments on the proposed consent decree must be received by *October 14, 2011.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0764, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Susan Stahle, Office of General Counsel (Mail Code 2344A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–1272; fax number (202) 564–5603; *e-mail address: stahle.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the New Mexico Environmental Department, Air Quality Bureau to the Public Service Company of New Mexico to operate the San Juan Generating Station. Under the proposed consent decree, EPA would agree to respond to the petition by February 15, 2012, or within 30 days after entry of the consent decree by the Court, whichever is later, and pay specified attorneys fees to the Plaintiffs. The Court would then dismiss the case with prejudice once EPA has fulfilled these obligations under the consent decree.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–0764) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the

close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 8, 2011.

Kevin McLean,

Acting Associate General Counsel.

[FR Doc. 2011–23524 Filed 9–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9463–4]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to resolve a lawsuit filed by the Sierra Club (''Plaintiff'') in the United States District Court for the District of Columbia: *Sierra Club* v. *Jackson,* No. 1; 11–cv–00636 (D.D.C.). Plaintiff's filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a proposed CAA Title V operating renewal permit to be issued by the Indiana Department of Environmental Management to the Edwardsport Generating Station in Knox County, Indiana. Under the proposed consent decree, EPA would agree to respond to the petition by September 30, 2011, or within 20 business days after entry of the consent decree by the Court, whichever is later.

DATES: Written comments on the proposed consent decree must be received by October 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0763, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Byron Brown, Office of General Counsel (Mail Code 2344A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–8312; fax number (202) 564–5603; *e-mail address: brown.byron@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a proposed CAA Title V renewal permit to be issued by the Indiana Department of Environmental Management to the Edwardsport Generating Station in Knox County, Indiana. Under the proposed consent decree, EPA would agree to respond to the petition by September 30, 2011, or within 20 business days after entry of the consent decree by the Court, whichever is later, and pay specified attorneys fees to the Plaintiffs. The Court would then dismiss the case with prejudice once EPA has fulfilled these obligations under the consent decree.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–0763) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains

copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 8, 2011.

Kevin McLean,

Acting Associate General Counsel.

[FR Doc. 2011–23549 Filed 9–13–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, September 13, 2011, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Proposed Amendment of the FDIC's Bylaws.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

DISCUSSION AGENDA: Memorandum and resolution re: Assessment Rate Adjustment Guidelines for Large and Highly Complex Institutions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at 202–898–7043.

Dated: September 6, 2011. Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2011–23646 Filed 9–12–11; 4:15 pm]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Matters To Be Added to the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the following matters will be added to the ''discussion agenda'' for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10 a.m. on Tuesday, September 13, 2011, in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC:

Memorandum and resolution re: Final Rule on Resolution Plans Required.

Memorandum and resolution re: Interim Final Rule on Resolution Plans Required for Insured Depository Institutions with $50 Billion or More in Total Assets.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at 202–898–7043.

Dated: September 7, 2011.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2011–23647 Filed 9–12–11; 4:15 pm]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register.** A copy of the agreement is 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.: 012008–005.

Title: The 360 Quality Association Agreement.

Parties: Ambassador Services, Inc., NYKCool AB, Seatrade Group NV, and SSA Marine, Inc.

Filing Party: Wayne R. Rohde, *Esq.;* Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment adds authority to adopt quality standards that could be followed by trucking companies and deletes SSA Marine, Inc. as a party.

By Order of the Federal Maritime Commission.

Dated: September 9, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–23570 Filed 9–13–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov*.

Alpha-Raleigh USA, Limited Liability Company dba ARL–USA (NVO & OFF), 481 Doremus Avenue, Newark, NJ 07105. Officer: Hakeem K. Bisiolu, Member/Manager (Qualifying Individual), Application Type: New NVO & OFF License.

APECS Logistics, Inc. (NVO & OFF), 2531 Monterey Place, Fullerton, CA 92833. Officers: Jou An Kim, CFO/Secretary (Qualifying Individual), Han K. Jung, President, Application Type: New NVO & OFF License.

Cargonauts USA, Corp. (NVO & OFF), 10913 NW., 30th Street, Suite 107–C, Doral, FL 33171. Officer: Miguel O. Gonzalez, President/Secretary (Qualifying Individual), Application Type: New NVO & OFF License.

Customs and Trade Services, Inc. (OFF), 10801 NW., 97th Street, #1, Miami, FL 33178. Officers: Reinaldo Rodriquez, Executive Vice President/Sec. (Qualifying Individual), Norman E. Gelber, President/Treasurer, Application Type: QI Change.

Global Cargo Connection, Inc. (OFF), 2775 W. Okeechobee Road, LOT 146, Hialeah, FL 33010. Officers: Yusniel Rodriguez, President (Qualifying Individual), Loris Gutierrez, Vice President/Secretary, Application Type: New OFF License.

Jacobson Global Logistics, Inc. (OFF), 1930 Sixth Avenue South, #401, Seattle, WA 98134. Officers: Sarah B. Dorscht, Senior Vice President (Qualifying Individual), Brian T. Lutt, Director/President, Application Type: Name Change.

Latin Link Logistics, LLC (NVO & OFF), 10405 NW 37th Terrace, Miami, FL 33178. Officers: Beatriz E. Jaramillo, Pricing, Trade & Marketing Manager (Qualifying Individual), Shariff Gonnella, Manager, Application Type: New NVO & OFF License.

Leschaco, Inc. (NVO & OFF), 15355 Vantage Parkway West, #195, Houston, TX 77032. Officers: Mark C. Malambri, President/CEO (Qualifying Individual), Martin Pieper, Treasurer, Application Type: QI Change.

New Star Freight, Inc. dba American Freight Solutions (NVO & OFF), 7354 Country Fair Drive, Corona, CA 92880. Officers: Xiaosong M. Liu, Operation Manager (Qualifying Individual), Xin S. Li, President, Application Type: New NVO & OFF License.

Sea Crest Logistics, Inc. (NVO), 324 San Marcos Street, Suite #7, San Gabriel, CA 91776. Officer: Veronica Knycha, President/Treasurer/Secretary (Qualifying Individual), Application Type: New NVO License.

Seapack Inc. dba Excel Forwarders (NVO & OFF), 2820 NW., 105th Avenue, #B, Miami, FL 33172. Officers: Mark Kearns, President (Qualifying Individual), Roland L. Malin-Smith, Application Type: Trade Name Change.

T.V.L. Global Logistics (N.Y.) Inc. (NVO), 45–14 251st Street, Suite 105, Little Neck, NY 11362. Officers: Michael Tsui, Vice President (Qualifying Individual), Chuang-Hsing Chuch, President, Application Type: QI Change.

The Villamayor Enterprises Limited Partnership, dba Villamayor Freight Forwarder (OFF), 8002 N. Oak Trafficway, Suite 108, Kansas City, MO 64118. Officers: Arthur B. Villamayor, General Partner (Qualifying Individual), Ariel S. Villamayor, Limited Partner, Application Type: New OFF License.

UTi, United States, Inc. dba UTi (NVO & OFF), 1660 Walt Whitman Road, Melville, NY 11747. Officers: Charles N. Deller, Vice President (Qualifying Individual), Christopher Dale, Director/President/CEO, Application Type: Trade Name Change & QI Change.

WTG Logistics, Inc. dba WTG International (NVO & OFF), 140 Epping Road, Exeter, NH 03833. Officers: Alain J. Beaudoin, Vice President (Qualifying Individual), William M. Walsh, President, Application Type: QI Change.

Dated: September 9, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–23573 Filed 9–13–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Tuesday, September 13, 2011.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Ernest Matney, employed by Knox Creek Coal Corp.,* Docket No. VA 2008–215. (Issues include whether the administrative law judge correctly ruled that the corporate agent in question was not liable for a civil penalty under section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(c).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform

the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

September 6, 2011.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 2011–23616 Filed 9–12–11; 4:15 pm]

BILLING CODE 6735–01–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 October 11, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Bon, Inc.; Goering Financial Holding Company Partnership, L.P.; and Goering Management Company, L.L.C.,* all in Moundridge, Kansas; to acquire 100 percent of the voting shares of Home State Bancshares, Inc., and thereby indirectly acquire voting shares of Home State Bank & Trust Co., both in McPherson, Kansas.

Dated: September 9, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–23493 Filed 9–13–11; 8:45 am]

BILLING CODE 6210–01–P

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

[August 1, 2011 Thru August 31, 2011]

8/01/2011		
20111082	G	Honeywell International, Inc.; EMS Technologies, Inc.; Honeywell International, Inc.
20111168	G	Claus Schmidbaur; Reflexite Corporation; Claus Schmidbaur.
8/02/2011		
20111090	G	Providence Equity Partners VI L.P.; Blackboard Inc.; Providence Equity Partners VI L.P.
8/03/2011		
20111021	G	Zodiac Aerospace; PAIG Investments Limited; Zodiac Aerospace.
20111108	G	Precision Castparts Corp.; Oak Hill Capital Partners II, L.P.; Precision Castparts Corp.
20111145	G	Dell Inc.; Force 10 Networks, Inc.; Dell Inc.
08/05/2011		
20111170	G	GRD Holding LP; Three Cities Fund III, L.P.; GRD Holding LP.
20111175	G	IHS Inc.; TCV VI, L.P.; IHS Inc.
20111179	G	Aetna Inc.; Oak Investment Partners XII, Limited Partnership; Aetna Inc.
20111183	G	Colam Entreprendre S.A.; Independent Electric Supply, Inc.; Colam Entreprendre S.A.
20111188	G	Adecco S.A.; Compass Partners European Equity Fund (Bermuda), L.P.; Adecco S.A.
20111189	G	Vanguard Natural Resources, LLC; Encore Energy Partners LP; Vanguard Natural Resources, LLC.
08/08/2011		
20111113	G	Parthenon Investors III, L.P.; Wells Fargo & Company; Parthenon Investors III, L.P.

EARLY TERMINATIONS GRANTED—Continued

[August 1, 2011 Thru August 31, 2011]

	08/10/2011	
20111031	G	Wolters Kluwer N.V.; National Registered Agents, Inc.; Wolters Kluwer N.V.
20111106	G	Piedmont Healthcare, Inc.; Henry Medical Center, Inc.; Piedmont Healthcare, Inc.
20111184	G	Hechos con Amor S.A. de C.V.; Avomex, Inc.; Hechos con Amor S.A. de C.V.
20111185	G	Grupo Kuo, S.A.B. de C.V.; Avomex, Inc.; Grupo Kuo, S.A.B. de C.V.
20111186	G	Randstad Holding nv; SFN Group, Inc.; Randstad Holding nv.
	08/11/2011	
20111131	G	Canadian Imperial Bank of Commerce; James and Virginia Stowers; Canadian Imperial Bank of Commerce.
	08/12/2011	
20111200	G	Ensign Energy Services Inc.; Rowan Companies, Inc.; Ensign Energy Services Inc.
20111202	G	Sevin Rosen Fund VIII L.P.; Splunk Inc.; Sevin Rosen Fund VIII L.P.
20111203	G	Chiron Topco, Inc.; Kinetic Concepts, Inc.; Chiron Topco, Inc.
20111205	G	Joseph Neubauer; ARAMARK Holdings Corporation; Joseph Neubauer.
20111218	G	ValueClick, Inc.; Dotomi, Inc.; ValueClick, Inc.
20111223	G	Insituform Technologies, Inc.; Edward R. Fyfe; Insituform Technologies, Inc.
20111231	G	Calumet Specialty Products Partners, L.P.; Murphy Oil Corporation; Calumet Specialty Products Partners, L.P.
	08/15/2011	
20111119	G	MedQuist Holdings Inc.; MultiModal Technologies, Inc.; MedQuist Holdings Inc.
20111198	G	GTCR Fund X/A, LP; BServ, Inc.; GTCR Fund X/A, LP.
20111219	G	Archer Limited; Wexford Partners 10, L.P.; Archer Limited.
20111220	G	Energy Capital Partners II–A, LP; Acorn Energy, Inc.; Energy Capital Partners II–A, LP.
20111228	G	J.H. Whitney VII. L.P.; MapleWood Equity Partners, L.P.; J.H. Whitney VII, L.P.
	08/17/2011	
20111088	G	Sumitomo Metal Industries, Ltd.; Rail Products Acquisition, LLC; Sumitomo Metal Industries, Ltd.
20111213	G	Oracle Corporation; InQuira, Inc.; Oracle Corporation.
20111235	G	Olympus Growth Fund V, L.P.; AEA Investors Small Business Fund LP; Olympus Growth Fund V, L.P.
	08/18/2011	
20111192	G	UnitedHealth Group Incorporated; New Mountain Partners II, L.P.; UnitedHealth Group Incorporated.
	08/19/2011	
20111194	G	Wells Fargo & Company; 2003 Riverside Capital Appreciation Fund, L.P.; Wells Fargo & Company.
20111233	G	Vance Street Capital LLC; Churchill Equity and ESOP, L.L.C.; Vance Street Capital LLC.
20111242	G	Warburg Pincus Private Equity X, L.P.; Credit Suisse Group AG; Warburg Pincus Private Equity X, L.P.
20111243	G	SPO Partners II, L.P.; Oasis Petroleum Inc.; SPO Partners II, L.P.
20111245	G	TransDigm Group Incorporated; Graham Partners II, L.P.; TransDigm Group Incorporated.
20111247	G	Gerald W. Schwartz; JELD-WEN Holding, Inc.; Gerald W. Schwartz.
20111248	G	TA XI L.P.; Senior Health Holdings, LLC; TA XI L.P.
20111252	G	Ares Corporate Opportunities Fund III, L.P.; Christine Dockstader; Ares Corporate Opportunities Fund III, L.P.
20111254	G	Roadrunner Transportation Systems, Inc.; Mason Wells Buyout Fund II, Limited Partnership; Roadrunner Transportation Systems, Inc.
20111255	G	Aquiline Financial Services Fund L.P.; Fidelity National Financial, Inc.; Aquiline Financial Services Fund L.P.
20111258	G	SPC Partners IV, L.P.; Johnson & Johnson; SPC Partners IV, L.P.
	08/22/2011	
20111171	G	William H. Gates III; Ecolab Inc.; William H. Gates III.
20111197	G	Summit Partners Private Equity Fund VII–A, L.P.; Water Street Healthcare Partners II, L.P.; Summit Partners Private Equity Fund VII–A, L.P.
20111204	G	Fresenius Medical Care AG & Co. KGaA; TA x, L.P.; Fresenius Medical Care AG & Co. KGaA.
20111267	G	GTCR Fund X/A, LP; John F. Neace; GTCR Fund X/A, LP.
	08/24/2011	
20111237	G	Gores Capital Partners II, L.P.; OCM Principal Opportunities Fund III, L.P.; Gores Capital Partners H, L.P.
20111238	G	OCM Principal Opportunities Fund III, L.P.; Gores Capital Partners II, L.P.; OCM Principal Opportunities Fund III, L.P.
20111257	G	Algonquin Power & Utilities Corp.; Atmos Energy Corporation; Algonquin Power & Utilities Corp.
	08/26/2011	
20111178	G	Smith Family Voting Trust; Lochinvar Corporation; Smith Family Voting Trust.
20111190	G	WPP plc; Global Market Insite, Inc.; WPP plc.
20111196	G	Bayer AG; Pathway Medical Technologies, Inc.; Bayer AG.

EARLY TERMINATIONS GRANTED—Continued

[August 1, 2011 Thru August 31, 2011]

20111215	G	Riverside Capital Appreciation Fund V, L.P.; VSS Mezzanine Partners, L.P.; Riverside Capital Appreciation Fund V, L.P.
20111259	G	EPCOR Utilities Inc.; American Water Works Company, Inc.; EPCOR Utilities Inc.
20111262	G	The Auto Club Group; AAA Auto Club South, Inc.; The Auto Club Group
20111264	G	HTC Corporation; Beats Electronics, LLC; HTC Corporation.
20111270	G	Atlantic Power Corporation; Capital Power Income L.P.; Atlantic Power Corporation.
20111271	G	Capital Power Corporation; Capital Power Income L.P.; Capital Power Corporation.
20111272	G	Hon Hai Precision Ind. Co. Ltd.; Cisco Systems, Inc.; Hon Hai Precision Ind. Co. Ltd.
20111273	G	Aqua America, Inc.; American Water Works Company, Inc.; Aqua America, Inc.
20111279	G	Baird Capital Partners V. LP; The Home Depot, Inc.; Baird Capital Partners V, LP.
20111280	G	NRG Energy, Inc.; Richard W. Vague; NRG Energy, Inc.
20111281	G	NIBE Industrier AB (publ.); Emerson Electric Co.; NIBE Industrier AB (publ.).
20111282	G	Suominen Corporation; Ahlstrom Corporation; SuominenCorporation.
20111284	G	Clayton, Dubilier & Rice Fund VIII, L.P.; Ingersoll-Rand plc; Clayton, Dubilier & Rice Fund VIII, L.P.
20111286	G	Cargill, Incorporated; Goldstein Group, Inc.; Cargill, Incorporated.
20111291	G	MEMC Electronic Materials, Inc.; Fotowatio Renewable Ventures, S.L.; MEMC Electronic Materials, Inc.
20111294	G	Regency Energy Partners LP; Energy Transfer Equity, L.P.; Regency Energy Partners LP.
20111295	G	Blount International, Inc.; Genstar Capital Partners III, L.P.; Blount International, Inc.
20111297	G	Vijay Goradia; Sunoco, Inc.; Vijay Goradia.
20111300	G	Ecolab Inc.; Nalco Holding Company; Ecolab Inc.
20111306	G	CI Capital Investors II, L.P.; James P. Banks; CI Capital Investors II, L.P.
20111308	G	WLR Recovery Fund IV, L.P.; The Governor and Company of the Bank of Ireland; WLR Recovery Fund IV, L.P.
20111309	G	WLR Recovery Fund V. L.P.; The Governor and Company of the Bank of Ireland; WLR Recovery Fund V, L.P.
		08/29/2011
20111056	G	Berry Plastics Group, Inc.; Rexam PLC; Berry Plastics Group, Inc.
20111217	G	Ipsos S.A.; Aegis Group plc; Ipsos S.A.
20111246	G	Windstream Corporation; PAETEC Holding Corp.; Windstream Corporation.
20111299	G	American International Group, Inc.; AerCap Holdings N.V.; American International Group, Inc.
		08/30/2011
20111234	G	Reyes Holdings, L.L.C.; Jeff A. Braverman; Reyes Holdings, L.L.C.
		08/31/2011
20110754	G	General Electric Company; CVT Holding SAS; General Electric Company
20111256	G	MidOcean Partners III, L.P.; Global Knowledge, Inc.; MidOcean Partners III, L.P.

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. 2011–23292 Filed 9–13–11; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[Notice CIB–2011–3; Docket–2011–0004; Sequence 6]

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Updated Notice.

SUMMARY: The General Services Administration (GSA) reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority. This notice is an updated Privacy Act system of record notice.

DATES: Effective October 14, 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 undertook and completed a review of its Privacy Act systems of records. As a result of the review GSA is publishing an updated Privacy Act system of records notice. Nothing in the revised system notice indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of record.

Dated: September 7, 2011.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/TRANSIT–1

SYSTEM NAME:

Transportation Benefits Records.

SYSTEM LOCATION:

System records are overseen by the Office of the Chief People Officer (C), 1275 First Street, NE., Washington, DC 20417; and by each of GSA's regional transportation benefits offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees applying for and receiving transit subsidies for use of public transportation and vanpools to and from the workplace.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record categories may include name, home address, Social Security Number, work organization and location, work zip code, work phone number, service computation date, mode of transportation, and commuting costs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 13150; 26 U.S.C. 132(f); and Federal Employees Clean Air Incentives Act (section 2(a) of Public Law 103–172, found at 5 U.S.C. 7905), as amended.

PURPOSE:

To establish and maintain systems for providing transportation fringe benefits to employees who use mass transportation to commute to and from work.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

System information is used to determine the eligibility of applicants for transportation benefits and to disburse benefits to eligible employees through the Department of Transportation. Information also may be disclosed as a routine use:

a. In any 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.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To an authorized official responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation; or to an agency, individual or organization, if there is reason to believe that such agency, individual or organization possesses information or is responsible for acquiring information relating to the investigation, trial or hearing, and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

d. To a Federal agency in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation, the letting of a contract, or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

e. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

f. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

g. To an expert, consultant, or contractor of GSA in the performance of a Federal duty related to the contract or appointment to which the information is relevant.

h. To the National Archives and Records Administration (NARA) for records management purposes.

i. 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; and (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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

System records are paper-based and stored in locked cabinets or electronic and stored on secured computer systems.

RETRIEVABILITY:

Records may be retrieved by name, Social Security Number, or other identifier in the system.

SAFEGUARDS:

Access is limited to authorized individuals with passwords or keys. Electronic files are maintained behind a firewall and paper files are stored in locked rooms or filing cabinets.

RETENTION AND DISPOSAL:

Applications will be maintained for as long as the applicant is an eligible participant in the subsidy program. System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Office of the Chief People Officer (C), Office of Human Capital Management (CH), General Services Administration, 1275 First Street, NE., Washington, DC 20417.

NOTIFICATION PROCEDURES:

Inquiries should be directed to the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests for access to records should be directed to the system manager. GSA rules for accessing records under the Privacy Act are provided in 41 CFR part 105–64.

RECORD CONTESTING PROCEDURES:

Requests to correct records should be directed to the system manager. GSA rules for contesting record contents and for appealing determinations are provided in 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Sources for information in the system are: Employees submitting applications for transit subsidies.

[FR Doc. 2011–23466 Filed 9–13–11; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[Notice: CIB–2011–3; Docket–2011–0004; Sequence 5]

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 October 14, 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 Inspector General Act of 1978* (5 U.S.C. App.) established the GSA Office of Inspector General (OIG) to conduct and supervise audits and investigations relating to the programs and operations of GSA. Within the GSA OIG, the responsibilities of the Office of Counsel to the Inspector General include (1) Providing legal services to the OIG on GSA programs and operations, administrative law issues, and criminal procedure, (2) representing the OIG in assisting the Department of Justice (DOJ)

with litigation, including settlement of cases arising under the False Claims Act, (3) representing the OIG in personnel actions, and (4) responding to requests submitted to the OIG, including under the *Freedom of Information Act* and *Privacy Act.* The system will provide for the collection of information to track, manage, and process *False Claims Act* complaints, administrative actions including personnel matters, *Freedom of Information Act* and *Privacy Act* requests, and other administrative and litigation matters handled by the Office of Counsel to the Inspector General.

Dated: September 7, 2011.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/ADM–26

SYSTEM NAME:

Office of Inspector General Counsel Files

SYSTEM LOCATION:

The system is maintained electronically and in paper form in the Office of Counsel to the Inspector General (OIG/JC).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are (1) parties to or are otherwise referenced in complaints, administrative actions or other litigation or potential litigation related to GSA, (2) in Freedom of Information Act, Privacy Act, correspondence, or other requests handled by the OIG, (3) in GSA or OIG special projects or other records maintained by the Office of Counsel, and (4) attorneys, paralegals, and other employees of the Office of Inspector General directly involved in these cases or matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information routinely and necessarily obtained by the OIG Counsel's Office in the conduct of its official responsibility to represent and advise the GSA OIG. Records in this system pertain to a broad variety of matters handled by the OIG Office of Counsel, including but not limited to civil, criminal, and administrative actions, personnel matters, correspondence, special projects, and *Freedom of Information Act* and *Privacy Act* requests. Records may include but are not limited to: Name, social security number, addresses, phone numbers, e-mail address, birth date, financial information, medical records, or employment records. The system may also contain other records such as: Case history files, copies of applicable laws, working papers of attorneys, testimony of witnesses, correspondence, accident reports, pleadings, affidavits, litigation reports, financial data and other records. This system notice covers records not covered by other appropriate system of records notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority to maintain the system is contained in the *Inspector General Act of 1978,* as amended, 5 U.S.C. App. 3.

PURPOSE(S):

The records in this system are maintained for the purpose of providing representational and advisory legal services to the OIG.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

Records are used by GSA officials and representatives of other government agencies on a need-to-know basis in the performance of their official duties under the authorities set forth above and for the following routine uses:

a. A record of any case in which there is an indication of a violation of law, whether civil, criminal, or regulatory in nature, may be disseminated to the appropriate Federal, State, local, or foreign agency charged with the responsibility for investigating or prosecuting such a violation or charged with enforcing or implementing the law.

b. A record may be disclosed to a Federal, State, local, or foreign agency or to an individual or organization in the course of investigating a potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such a violation, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, and disclosing the information is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

c. A record relating to a case or matter may be disclosed in an appropriate Federal, State, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice, even when the agency is not a party to the litigation.

d. A record relating to a case or matter may be disclosed to an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on matters such as settlement of the case or matter, plea-bargaining, or informal discovery proceedings.

e. A record may be disclosed to a Federal, State, local, foreign, or tribal or other public authority in response to its request in connection with 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 issuing of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter.

f. A record may be disclosed to an appeal, grievance, hearing, or complaint examiner; an equal 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.

g. A record may be disclosed as a routine use to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the person who is the subject of the record.

h. A record may be disclosed: (a) To an expert, a consultant, or contractor of GSA engaged in a duty related to an agency function to the extent necessary to perform the function; and (b) to a physician to conduct a fitness-for-duty examination of a GSA officer or employee.

i. 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; and (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.

j. In any 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.

k. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) in accordance with their

responsibilities for evaluating Federal programs.

l. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/or electronic form in the Office of Inspector General.

RETRIEVABILITY:

Records may be retrieved based on any information captured, including but not limited to: name, case name, and social security number.

SAFEGUARDS:

Access to electronic records is limited to authorized individuals with a need to know, and with passwords or keys. Electronic files are maintained behind an OIG firewall certified and accredited based on the security controls of the National Institute of Standards and Technology (NIST) and GSA Policy, and paper files are stored in locked rooms or filing cabinets with access limited to authorized personnel.

RETENTION AND DISPOSAL:

System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Office of Counsel to the Inspector General, General Services Administration, 1800 F Street, NW., Washington, DC 20405. The Office of Counsel may also be contacted via telephone at (202) 501–1932.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if the system contains information about them should contact the system manager at the above address.

RECORD ACCESS PROCEDURES:

Individuals wishing to access their own records should contact the system manager in writing at the address above, and should include their full name (maiden name if appropriate), address, and date and place of birth. General inquiries may be made by telephone: (202) 501–1932.

RECORD CONTESTING PROCEDURE:

Individuals wishing to amend their records should contact the system manager at the address above. Applicable regulations are located at 41 CFR 105–64.

RECORD SOURCE CATEGORIES:

The sources for information in the system are data from other systems, information submitted by individuals or their representatives, information gathered from public sources, and information from other entities or individuals involved in the cases or matters.

[FR Doc. 2011–23467 Filed 9–13–11; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Preparedness and Response; Delegation of Authorities

Notice is hereby given that I have delegated to the Assistant Secretary for Preparedness and Response (ASPR) the authorities vested in the Secretary of Health and Human Services under Sections 319F–2(c) and 319L of the Public Health Service (PHS) Act, as amended, with the exception of those reserved to the Secretary, as they pertain to the functions assigned to the Office of the ASPR. The Secretary reserves the authority under:

1. Section 319F–2(c)(2)(B)(ii) to determine which countermeasures are necessary to protect public health;
2. Section 319F–2(c)(4) to call for development of countermeasures;
3. Section 319F–2(c)(6)(a) to make recommendation to the President;
4. Section 319F–2(c)(2)(C) and (6)(C) to submit notices to Congress;
5. Section 319F–2(c)(7)(C)(i)(II) to promulgate regulations;
6. Section 319L(c)(3) to appoint the Director of BARDA;
7. Section 319L(c)(7)(B) to hire special consultants; and
8. Section 319L(c)(7)(C) to hire a limited number of highly qualified individuals.

Functions and authorities under section 319F–2(c) may be re-delegated. Functions and authorities necessary to implement section 319L of the PHS Act shall be re-delegated to the Biomedical Advanced Research and Development Authority Director. Additionally, the ASPR is permitted to re-delegate authorities and functions under 319L otherwise, such as to the Acquisitions Management, Contracts and Grants Director (AMCG), as needed. These authorities shall be exercised under the Department's policy on regulations and the existing delegation of authority to approve and issue regulations.

The ASPR will implement the Other Transactions authorities under Section 319L(c) in accordance with statutory limitations and memorandum between AMCG and the Office of the Grants & Acquisition Policy and Accountability, dated June 16, 2010.

The authority granted herein under Section 319F–2(c)(7)(C)(iii)(IV) shall be exercised subject to advance concurrence by and consultation with the Office of the Assistant Secretary for Financial Resources.

I hereby affirm and ratify any actions taken by the Assistant Secretary for Preparedness and Response, or your subordinates, which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: September 7, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–23464 Filed 9–13–11; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–11–0009]

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

Legionellosis Case Report—OMB 0920–0009, exp. 4/31/2013-(Revision) National Center for Immunization and Respiratory Diseases (NCIRD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Surveillance for legionellosis, a nationally notifiable disease, has been conducted since 1980. A voluntary surveillance system, maintained by the Centers for Disease Control and Prevention's Respiratory Diseases Branch, collects and monitors Legionellosis Case Report forms submitted by local and state health departments on the approved form (OMB 0920–0009).

To reflect recent enhanced surveillance initiatives for travel and healthcare-associated legionellosis and recent changes to the nationally notifiable case definition, CDC is requesting changes to the currently approved Legionellosis Case Report form. The changes will allow the Legionella Program to better detect potential clusters and outbreaks of Legionnaires' disease and to monitor changing epidemiological trends by collecting a greater level of detail for each legionellosis case. The burden to the respondents should be minimally affected by these proposed changes. In most cases, the burden should be reduced as the changes requested should provide clearer guidance for form completion.

There are no costs to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
State public health	50	70	20/60	1,167
Total	50	70	20/60	1,167

Dated: September 8, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–23474 Filed 9–13–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10114]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* National Provider Identifier (NPI) Application and Update Form and Supporting Regulations in 45 CFR 142.408, 45 CFR 162.406, 45 CFR 162.408; *Use:* The National Provider Identifier (NPI) Application and Update Form is used by health care providers to apply for NPIs and furnish updates to the information they supplied on their initial applications. The form is also used to deactivate their NPIs if necessary. The NPI Application/Update form has been revised to provide additional guidance on how to accurately complete the form. This collection includes clarification on information that is required on initial applications. Minor changes include adding a 'delete' check box for removal of information. This collection also includes revisions to the instructions. *Form Number:* CMS–10114 (OMB#: 0938–0931); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal government; *Number of Respondents:* 304 million; *Total Annual Responses:* 481,440; *Total Annual Hours:* 481,440. (For policy questions regarding this collection contact Leslie Jones at 410–786–6599. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *November 14, 2011.*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 8, 2011.

Martique Jones,

Director, Regulations Development Group, Division B Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–23430 Filed 9–13–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10334]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Application for Coverage in the Pre-Existing Condition Insurance Plan; *Use:* The Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight is requesting clearance by the Office of Management and Budget for modifications to this previously approved collection package. These changes are being requested to (1) provide a mechanism for a PCIP enrollee who has moved from a state-administered PCIP to quickly and efficiently enroll into the federally-administered PCIP (2) provide a mechanism for a PCIP applicant to identify a third party entity will pay their premium to ensure appropriate premium billing (3) provide a mechanism whereby a licensed insurance agent or broker may identify their referral of an applicant (4) request employer information to expand ways to identify and prevent instances of insurer dumping and (5) make clarifications to existing application language. *Form Number:* CMS–10334 (OCN: 0938–1095) *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 83,333; *Number of Responses:* 83,333; *Total Annual Hours:* 179,499. (For policy questions regarding this collection, contact Laura Dash at 410–786–8623. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *October 14, 2011*

OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: September 8, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–23429 Filed 9–13–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9980–NC]

Request for Information Regarding State Flexibility To Establish a Basic Health Program Under the Affordable Care Act

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: This notice is a request for information regarding section 1331 of the Affordable Care Act, which provides States with the option to establish a Basic Health Program. This option permits States to enter into contracts to offer one or more ''standard health plans'' providing at least the essential health benefits described in section 1302(b) of the Affordable Care Act to eligible individuals in lieu of offering such individuals coverage through the Affordable Insurance Exchange (Exchange).

DATES: *Comment Date:* To be assured consideration, responses must be received at one of the addresses provided below, no later than 5 p.m. on October 31, 2011.

ADDRESSES: In responding, please refer to file code CMS–9980–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit responses in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–9980–NC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–9980–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Shaina Rood, (301) 492–4422.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Section 1331(a) of the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), referred to collectively as the Affordable Care Act, directs the Secretary of Health and Human Services (the Secretary) to establish a Basic Health Program under which States may enter into contracts with one or more standard health plans that provide health coverage to eligible individuals in lieu of offering such individuals coverage through the Exchange. For States choosing this option, section 1331(a)(2) of the Affordable Care Act provides that the Secretary certify that the amount of the monthly premium charged to eligible individuals enrolled in a plan under contract under this program, called a standard health plan, does not exceed the amount of the monthly premium that an eligible individual would have paid if he or she were to receive coverage from the applicable benchmark plans (as defined in section 36B(b)(3)(B) of the Internal Revenue Code of 1986) through the Exchange. This section also directs the Secretary to certify that cost-sharing does not exceed the standards specified in section 1331(a)(2)(A)(ii) of the Affordable Care Act.

Section 1331(b) of the Affordable Care Act defines a standard health plan as one selected by the State that: (1) Only enrolls applicants who are determined eligible using the eligibility standards specified in section 1331(e) of the Affordable Care Act; (2) covers at least the essential health benefits described in section 1302(b) of the Affordable Care Act; and (3) in the case of a plan that provides health insurance coverage offered by a health insurance issuer, has a medical loss ratio of at least 85 percent.

Section 1331(c) of the Affordable Care Act specifies that a Basic Health Program will establish a competitive process for entering into contracts with standard health plans, including negotiation of premiums, cost-sharing, and benefits in addition to the essential health benefits. The statute provides that the State include in its competitive process the inclusion of innovative features such as care coordination and care management for enrollees, incentives for the use of preventive services, and the establishment of relationships between providers and patients that maximize patient involvement in health care decision-making. The contracting process shall also take into consideration, and make suitable allowances for, the differences in the health care needs of enrollees and the differences in local availability of, and access to, health care providers.

Section 1331(c)(2) of the Affordable Care Act provides that the competitive process shall also include contracting with managed care systems, or with systems that offer as many of the attributes of managed care as are feasible in the local health care market. The competitive contracting process shall also include the establishment of specific performance measures and standards for issuers that focus on quality of care and improved health outcomes. Section 1331(c)(3) provides that a State shall, to the maximum extent feasible, seek to make multiple standard health plans available to ensure individuals have a choice of such plans. It also provides that a State may negotiate a regional compact with other States to include coverage of eligible individuals in all such States in agreements with issuers of standard health plans.

Section 1331(c)(4) of the Affordable Care Act directs a State choosing to establish a Basic Health Program to coordinate the administration of a Basic Health Program with Medicaid, the Children's Health Insurance Program (CHIP), and other State-administered health programs.

Section 1331(d)(1) of the Affordable Care Act allows the Secretary to transfer Federal funds to a State that establishes a Basic Health Program in accordance with the standards of the program under section 1331(a). Section 1331(d)(2) of the Affordable Care Act directs that a State establish a trust fund for the deposit of the Federal funds it receives for its Basic Health Program, and specifies that the amounts in the trust may only be used to reduce the premiums and cost-sharing of, or to provide additional benefits for, eligible individuals enrolled in standard health plans within a Basic Health Program.

Section 1331(d)(3) of the Affordable Care Act specifies that a State that operates a Basic Health Program will receive 95 percent of the amount of premium tax credits, and the cost-sharing reductions, that would have been provided to (or on behalf of) eligible individuals enrolled in standard health plans through a Basic Health Program, if the eligible individuals were instead enrolled in qualified health plans (QHP) through the Exchange and receiving premium tax credits and cost-sharing reductions. To determine the amount of payment, the Secretary shall take into account all relevant factors necessary to determine the amount that would have been provided to eligible individuals as specified in 1331(d)(3), including, but not limited to, whether any reconciliation of the credit or cost-sharing reductions would have occurred if the enrollee had been so enrolled.

Section 1331(d)(3) also provides that the determination shall also take into consideration the experience of other States with respect to participation in an Exchange and such credits and reductions provided to residents of the other States, with a special focus on enrollees with income below 200 percent of poverty. Additionally, the Secretary shall adjust the amount of payment for any fiscal year to reflect any error in the determinations for any preceding fiscal year.

Section 1331(e) of the Affordable Care Act specifies eligibility standards for a Basic Health Program. To be determined

eligible for a Basic Health Program, an individual must:

(1) Be a resident of a State participating in a Basic Health Program;

(2) Be eligible for enrollment in a QHP through the Exchange but for the existence of a Basic Health Program;

(3) Not be eligible to enroll in the State's Medicaid program under title XIX of the Social Security Act (the Act), for benefits that at a minimum consist of the essential health benefits described in section 1302(b) of the Act;

(4) Have a household income that exceeds 133 percent but does not exceed 200 percent of the Federal poverty level (FPL), or, for a non-citizen lawfully present who is not eligible for Medicaid based on immigration status, a household income that is not greater than 133 percent of the FPL;

(5) Not be eligible for minimum essential coverage or is eligible for an employer-sponsored plan that is not affordable coverage; and

(6) Not have attained age 65 as of the beginning of the plan year.

Section 1331(f) of the Affordable Care Act directs the Secretary to conduct an annual review of each State Basic Health Program to ensure that it complies with the standards of section 1331. Through this annual review, the State will provide information to demonstrate that its Basic Health Program meets: (1) Eligibility verification standards for participation in the program; (2) standards for the use of Federal funds received by the program; and (3) quality and performance standards.

As specified in section 1331(g) of the Affordable Care Act, a standard health plan offeror may be a licensed health maintenance organization, a licensed health insurance insurer, or a network of health care providers established to offer services under the program; the statute provides authority for the State to determine eligibility to offer a standard health plan.

II. Request for Information

Section 1321(a)(2) of the Affordable Care Act directs the Secretary to consult with stakeholders to ensure balanced representation among interested parties in issuing regulations to implement programs pursuant to title I. The Department of Health and Human Services has consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners, regular contact with States through the Exchange grant process, and meetings with tribal representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. This consultation will continue throughout the development of guidance and regulations related to the Basic Health Program.

As such, we are requesting information to aid in the development of standards for the establishment and operation of a Basic Health Program. To assist in responding, this request for information describes the specific areas where input is particularly requested.

Specifically, we ask for responses to the questions below to provide the Secretary with relevant information for the development of guidance and regulations regarding the Basic Health Program. However, it is not necessary for respondents to address every question below and respondents may also address additional issues about the Basic Health Program that are not listed here. Individuals, groups, and organizations interested in providing responses may do so at their discretion by following the above mentioned instructions.

A. General Provisions

1. What are some of the major factors that States are likely to consider in determining whether to establish a Basic Health Program? Are there additional flexibilities, advantages, costs, savings or challenges for the State and/or consumer that would make this option more or less attractive to States? If so, what are they?

2. What are key considerations for States in placing responsibility for a Basic Health Program within the State organizational structure?

3. What are the challenges and costs associated with managing a Basic Health Program?

4. Are States that are exploring the Basic Health Program considering implementation for 2014, or for later years? What are the key tasks that need to be accomplished, and within what timeframes, to implement the Basic Health Program in a timely fashion? What kinds of business functions will need to be operational before implementation, and how soon will they need to be operational? Are there opportunities to leverage existing systems and increase efficiency within the State structure? To what extent have States begun developing business plans or budgets relating to Basic Health Program implementation?

5. To what extent have States already begun to assess whether to establish a Basic Health Program? What internal and/or external entities are involved, or will likely be involved in this planning process?

6. What guidance or information would be helpful to States, plans, and other stakeholders as they begin the planning process? What other terms or provisions need additional clarification to facilitate implementation and compliance? What specific clarifications would be helpful?

7. How can the Administration provide technical assistance? What form(s) of technical assistance would be most helpful to States?

B. Standard Health Plan Standards and Standard Health Plan Offerors

1. What additional standards, if any, should standard health plans participating in a State's Basic Health Program meet? What consumer protections should be included? How should quality and performance be measured?

2. What plan design issues should be considered? How likely is it for a State to consider an expanded benefit package beyond the essential health benefits for standard health plans participating in a State's Basic Health Program? What are the advantages and disadvantages of an expanded benefit package for standard health plans compared to qualified health plans?

3. What is the expected impact of standard health plans on provider payments and consumer access?

C. Contracting Process

1. What innovative features should States consider when negotiating through the contracting process with standard health plans to participate in a Basic Health Program?

2. What considerations exist in determining whether to utilize the regional compact authority in Section 1331(c)(3)(B) of the Affordable Care Act? Are States interested in pursuing this approach?

D. Coordination With Other State Programs

1. What is the expected impact of a Basic Health Program on the Exchange's purchasing power and viability? How might States organize a Basic Health Program with respect to purchasing structure?

2. What is the expected impact of a Basic Health Program on plans participating in the Exchange in terms of risk profile, enrollment, and premium stability? What is the expected impact on overall coverage?

3. What are some of the major factors that States are likely to consider in determining how to structure their Basic Health Program? Are States likely to structure the Basic Health Program as one component of its other public

programs? Are States likely to consider a CHIP-like approach or other options? What are the pros and cons of these various options?

4. How can eligibility and enrollment be effectively coordinated between the Basic Health Program and other State programs to reduce churning between programs and promote continuity of care?

5. How could establishing a Basic Health Program affect the ability of an entire family to be covered by the same plan?

6. Are standard health plans likely to also participate in other coverage programs, such as the Exchanges, Medicaid, or CHIP? Should this be encouraged, and if so, how could CMS and States encourage it?

E. Amount of Payment

1. The statute specifies that amounts in the trust fund may only be used to reduce the premiums and cost-sharing of, or to provide additional benefits for, eligible individuals enrolled in standard health plans within a Basic Health Program. What options are States considering for reducing premiums and cost-sharing, or providing additional benefits? What, if any, guidance is needed on this provision?

2. What are the likely administrative costs for a Basic Health Program? What factors, especially in terms of resources, are likely to affect a State's ability to establish a Basic Health Program? How are States likely to fund the costs associated with establishing and administering a Basic Health Program?

3. The statute specifies that in developing the financial methodology for the Basic Health Program, the determination of the value of the premium tax credits and cost-sharing reductions should take into consideration the experience of other States. What information would be most helpful to inform this methodology? Should implementation of the Basic Health Program be postponed until other States' experiences are available?

4. Other than those listed in the statute, what factors should be considered when establishing the methodology for determining the amount of Basic Health Program funding to States? How should the Federal government implement this calculation?

5. The statute specifies that the funding calculation is on a per-enrollee basis. How should the Federal government acquire the detailed information necessary to perform this calculation?

6. What are the best State-specific data sources to use in estimating the availability of affordable employer-sponsored insurance?

7. What methods should be considered to measure and monitor compliance with the 95 percent cap on funding? How should CMS implement the provisions in Section 1331(d)(3)(B) of the Affordable Care Act regarding corrections to overpayments made in any year?

F. Eligibility

1. What education and outreach will be necessary to facilitate a helpful consumer experience?

G. Secretarial Oversight

1. What process should the Secretary use to certify or recertify Basic Health Programs? How should this process be similar to or different from Exchange certification?

2. What should be considered when developing an oversight process for the Basic Health Program?

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: July 27, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–23388 Filed 9–9–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Food and Drug Administration/Xavier University Global Outsourcing Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) Cincinnati District, in cosponsorship with Xavier University, is announcing a public conference entitled ''FDA/Xavier University Global Outsourcing Conference.'' This 2.5-day public conference for the pharmaceutical industry is in direct alignment with the ''FDA Strategic Priorities 2011–2015,'' and includes presentations from key FDA officials, global regulators, and industry experts. This conference drives collaboration on the topic of global outsourcing compliance by bringing pharmaceutical/biotechnology companies and contract partners to the same event to address the issues that reside on both sides of the contract. Expert presentations address the ''how to'' aspects of improving outsourced product quality through topics such as Strategic Procurement, End-to-End lifecycle product management, Managing Global Complex Supply Chains, and other topics. The experience level of our audience has fostered engaged dialog that has lead to innovative initiatives.

Dates and Times: The public conference will be held on October 3, 2011, from 8:30 a.m. to 5 p.m., October 4, 2011, from 8:30 a.m. to 5 p.m., and October 5, 2011, from 8:30 a.m. to 1 p.m.

Location: The public conference will be held on the campus of Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073 or 513–745–3396.

Contact Persons:

For information regarding this document: Steven Eastham, Food and Drug Administration, Cincinnati South Office, 36 East Seventh Street, Cincinnati, OH 45202, 513–246–4134, e-mail: *steven.eastham@fda.hhs.gov.*

For information regarding the conference and registration: Marla Phillips, Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073, e-mail: *phillipsm4@xavier.edu.*

Registration: There is a registration fee. The conference registration fees cover the cost of the presentations, training materials, receptions, breakfasts, lunches, dinners, and dinner speakers for the 2.5 days of the conference. Prior online registration or registration by mail must be done by October 3, 2011. There will also be onsite registration. The cost of registration is as follows:

TABLE 1—REGISTRATION FEES [1]

Attendee	Fee
Industry	$1,495
Small Business (<100 employees)	1,000
Consultants	700
Startup Manufacturer	300
Academic/Government	300
Media	Free

[1] The fourth registration from the same company is free.

The following forms of payment will be accepted: American Express, Visa, Mastercard, and company checks.

To register online for the public conference, please visit the ''Register Now'' link on the conference Web site at *http://www.XavierGOC.com.* FDA has verified the Web site address, but is not responsible for subsequent changes to

the Web site after this document publishes in the **Federal Register**.

To register by mail, please send your name, title, firm name, address, telephone and fax numbers, e-mail, and payment information for the fee to Xavier University, *Attention:* Sue Bensman, 3800 Victory Pkwy., Cincinnati, OH 45207. An e-mail will be sent confirming your registration.

Attendees are responsible for their own accommodations. The conference headquarter hotel is the Downtown Cincinnati Hilton Netherlands Plaza, 35 West Fifth Street, Cincinnati, OH 45202, 513–421–9100. To make reservations online, please visit the ''Venue & Logistics'' link at *http://www.XavierGOC.com.* The hotel is expected to sell-out during this timeframe; so, early reservation in the conference room-block is encouraged.

If you need special accommodations due to a disability, please contact Marla Phillips (see *Contact Persons*) at least 7 days in advance of the conference.

SUPPLEMENTARY INFORMATION: The public conference helps fulfill the Department of Health and Human Services and FDA's important mission to protect the public health. The conference will provide those engaged in FDA-regulated outsourcing with information on the following topics:

- Regulatory Expectations for Outsourcing Roles and Responsibilities, Supply Chain Quality, and Challenges Observed,
- Price Versus Total Cost of Ownership,
- Strategic Procurement,
- Development and Commercial Contracts,
- Functional Quality Agreements,
- Meaningful Metrics,
- FDA and the Medicines and Healthcare Products Regulatory Agency Inspection Trends and Enforcement,
- McNeil Case Study and Living Under Consent Decree,
- Practical Risk Management and Case Studies of Litigation,
- Supplier Qualification Program,
- Third Party Initiatives and Impact,
- Operationalizing Quality-by-Design,
- Audit Panel to Cover Focus Areas for Due Diligence Audits, Ongoing Audit/Oversight, and Supply Chain Audits,
- The Power of Integrated Supply Chains—By Design. Drive to the Source of the Frustrations,
- End-to-End Planning for Successful Launch,
- Pharma Case Study on How to Manage a Global Complex Supply Chain,
- USP <1079>: Good Storage and Distribution Practices, and USP <1083> Pedigree and Track and Trace Presented By the Author, and
- Next Steps for the Industry.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The conference helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The conference also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) by providing outreach activities by Government Agencies to small businesses.

Dated: September 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–23482 Filed 9–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gastrointestinal/Kidney Pathophysiology, Toxicology/Pharmacology AREA Grant Applications.

Date: October 5, 2011.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 1 Metro Center, Bethesda, MD 20814.

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Topic: Enabling Bioanalytical and Imaging Technologies.

Date: October 6–7, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Washington DC Downtown, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Ross D Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Neuroscience.

Date: October 6, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@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: September 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23530 Filed 9–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, October 5, 2011, 3:30 p.m. to October 5, 2011, 6:30 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814 which was published in the **Federal Register** on September 6, 2011, 76 FR 55076–55077.

The meeting is cancelled due to the reassignment of applications.

Dated: September 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23536 Filed 9–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Blueprint Neurotherapeutics.

Date: September 27, 2011.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar Arlington, 1121 North 19th Street, Arlington, VA 22209.

Contact Person: Ernest W. Lyons, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–4056, *lyonse@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23540 Filed 9–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, September 27, 2011, 2 p.m. to September 27, 2011, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on August 18, 2011, 76 FR 51379.

The meeting will be held on September 27, 2011 from 1 p.m. to 4 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: September 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23535 Filed 9–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Modeling and Analysis of Biological Systems Study Section, September 29, 2011, 8 a.m. to September 29, 2011, 5 p.m., Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815 which was published in the **Federal Register** on August 26, 2011, 76 FR 53479.

The meeting will be held September 28, 2011, 7:30 p.m. to September 29, 2011, 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: September 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23529 Filed 9–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3326–EM; Docket ID FEMA–2011–0001]

Puerto Rico; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Puerto Rico (FEMA–3326–EM), dated August 22, 2011, and related determinations.

DATES: *Effective Date:* August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 24, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

September 7, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23402 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3330–EM; Docket ID FEMA–2011–0001]

Massachusetts; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Massachusetts (FEMA–3330–EM), dated August 26, 2011, and related determinations.

DATES: *Effective Date:* September 5, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 5, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23513 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3332–EM; Docket ID FEMA–2011–0001]

New Jersey; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New Jersey (FEMA–3332–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* September 5, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 5, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23510 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 3 to Notice of a Major Disaster Declaration.

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* September 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 1, 2011.

Addison, Bennington, and Orange Counties for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23444 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4021–DR; Docket ID FEMA–2011–0001]

New Jersey; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–4021–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Burlington, Hudson, Ocean, and Union Counties for Individual Assistance and Public Assistance.

Mercer County for Individual Assistance (already designated for Public Assistance).

Bergen, Essex, Middlesex, Morris, Passaic, and Somerset Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23412 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4021–DR; Docket ID FEMA–2011–0001]

New Jersey; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–4021–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Middlesex County for Individual Assistance.

Atlantic, Cape May, Cumberland, and Salem Counties for Individual Assistance (already designated for Public Assistance).

Camden, Gloucester, Hunterdon, Monmouth, Sussex, and Warren Counties for Individual Assistance and Public Assistance.

Mercer County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23410 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Schenectady and Orange Counties for Public Assistance, including direct federal assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

September 7, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23409 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Sullivan County for Public Assistance, including direct federal assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23408 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1999–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1999–DR), dated July 1, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 1, 2011.

Stonewall County for Public Assistance.

King and Scurry Counties for Public Assistance (already designated for emergency protective measures [Category B], including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Dated: September 7, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23407 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Otsego County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23401 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 2, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Orange, Saratoga, and Sullivan for Individual Assistance.

Clinton, Montgomery, Rockland, Suffolk, and Warren Counties for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

Kings County for Public Assistance, including direct federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23399 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Nassau, Rensselaer, and Westchester Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23392 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 5, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 5, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23500 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4021–DR; Docket ID FEMA–2011–0001]

New Jersey; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–4021–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 5, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 5, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23497 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4026–DR; Docket ID FEMA–2011–0001]

New Hampshire; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4026–DR), dated September 3, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Hampshire is hereby amended to include the Individual Assistance program in the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 2, 2011.

Carroll and Grafton Counties for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23496 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4023–DR; Docket ID FEMA–2011–0001]

Connecticut; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Connecticut (FEMA–4023–DR), dated September 2, 2011, and related determinations.

DATES: *Effective Date:* September 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Stephen M. DeBlasio Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Gary Stanley as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23445 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4023–DR; Docket ID FEMA–2011–0001]

Connecticut; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Connecticut (FEMA–4023–DR), dated September 2, 2011, and related determinations.

DATES: *Effective Date:* September 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Connecticut is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 2, 2011.

Hartford, Tolland, and Windham Counties for Public Assistance, including direct federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23448 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4023–DR; Docket ID FEMA–2011–0001]

Connecticut; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Connecticut (FEMA–4023–DR), dated September 2, 2011, and related determinations.

DATES: *Effective Date:* September 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Connecticut is hereby amended to include the Individual Assistance program in the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 2, 2011.

Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham Counties for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23449 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4017–DR; Docket ID FEMA–2011–0001]

Puerto Rico; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 24, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23417 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 1, 2011.

Caledonia County for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23398 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* September 2, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 1, 2011.

Windham County for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23416 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* September 2, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now August 27, 2011, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23415 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4013–DR; Docket ID FEMA–2011–0001]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–4013–DR), dated August 12, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 12, 2011.

Lincoln County for Individual Assistance (already designated for Public Assistance).

Nemaha and Richardson Counties for Individual Assistance (already designated for emergency protective measures [Category B] under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23508 Filed 9–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5495–N–03]

Notice of Proposed Information Collection: Comment Request; Community Challenge Planning Grant Program, Notice of Funding Availability

AGENCY: Office Sustainable Housing and Communities, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department of Housing and Urban Development's Community Challenge Planning Grant Program fosters reform and reduces barriers to achieving affordable, economically vital, and sustainable communities. Such efforts may include amending or replacing local master plans, zoning codes, and building codes, either on a jurisdiction-wide basis or in a specific neighborhood, district, corridor, or sector to promote mixed-use development, affordable housing, the reuse of older buildings and structures for new purposes, and similar activities with the goal of promoting sustainability at the local or neighborhood level. This Program also supports the development of affordable housing through the development and adoption of inclusionary zoning ordinances and other activities to support plan implementation.

DATES: *Comments Due Date:* November 14, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2501–0025) and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Thaddeus Wincek, Office of Sustainable Housing and Communities, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–6617 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Community Challenge Planning Grant Notice of Funding Availability.

OMB Control Number, if applicable: 2501–0025.

Description of the need for the information and proposed use: The Department of Housing and Urban Development's Community Challenge Planning Grant Program fosters reform and reduces barriers to achieving affordable, economically vital, and sustainable communities. Such efforts may include amending or replacing local master plans, zoning codes, and building codes, either on a jurisdiction-wide basis or in a specific neighborhood, district, corridor, or sector to promote mixed-use development, affordable housing, the reuse of older buildings and structures for new purposes, and similar activities with the goal of promoting sustainability at the local or neighborhood level. This Program also supports the development of affordable housing through the development and adoption of inclusionary zoning ordinances and other activities to support plan implementation.

Agency form numbers, if applicable: HUD–424CBW, HUD–2880, HUD–96011.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 600 and the number of responses is 1. There will be in total, approximately 900 total responses. The total reporting burden is 1800 hours.

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 9, 2011.

Shelley Poticha,

Director, Office of Sustainable Housing and Communities, U.S. Department of Housing and Urban Development.

[FR Doc. 2011–23533 Filed 9–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5495–N–02]

Notice of Proposed Information Collection: Comment Request; Capacity Building for Sustainable Communities Program: Notice of Funding Availability

AGENCY: Office Sustainable Housing and Communities, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Capacity Building for Sustainable Communities Program (Program), through a Notice of Funding Availability, will identify intermediary organizations that can provide capacity building support for communities engaged in planning efforts that support community involvement and integrate housing, land use, land cleanup and preparation for reuse, economic and workforce development, transportation, and infrastructure investments.

DATES: *Comments Due Date:* November 14, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2501–0026) and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Thaddeus Wincek, Office of Sustainable Housing and Communities, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–6617 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Capacity Building for Sustainable Communities Notice of Funding Availability.

OMB Control Number, if applicable: 2501–0026.

Description of the need for the information and proposed use: The Capacity Building for Sustainable Communities Program (Program), through a Notice of Funding Availability, will identify intermediary organizations that can provide capacity building support for communities engaged in planning efforts that support community involvement and integrate housing, land use, land cleanup and preparation for reuse, economic and workforce development, transportation, and infrastructure investments.

Agency form numbers, if applicable: HUD–96011, HUD–424CBW, HUD–2880, SF–424, SF–424 Supplement, SF–LLL.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 480. The number of respondents is 60, the number of responses is 1, the frequency of response is on occasion, and the burden hours per response is 8.

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 9, 2011.

Shelley Poticha,

Director, Office of Sustainable Housing and Communities, U.S. Department of Housing and Urban Development.

[FR Doc. 2011–23538 Filed 9–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5481–N–15]

Notice of Proposed Information Collection: Comment Request, Protection and Enhancement of Environmental Quality

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 14, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: William D. Kelleher, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7256, Washington, DC 20410–7000.

FOR FURTHER INFORMATION CONTACT: Charles Bien, Acting Director, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street, SW., Room 7250, Washington, DC 20410–7000. For telephone and e-mail communication, contact Jerimiah Sanders, Environmental Review Division, (202) 402–4571 or *e-mail: jerimiah.j.sanders@hud.gov.* This phone number is not toll-free. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as Amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Environmental Review of Proposed Housing Development.

OMB Control Number, if applicable: 2506–0177.

Description of the need for the information and proposed use: The information collection applies to applicants seeking HUD financial assistance for their project proposals and is used by HUD for the performance of the Department's compliance with the National Environmental Policy Act and related federal environmental laws and authorities in accordance with HUD environmental regulations, 24 CFR part 50: ''Protection and Enhancement of Environmental Quality.''

Agency form numbers, if applicable: None.

The total numbers of hours needed to prepare the information collection is approximately eight hours. The number of respondents is approximately 2,600. The frequency of response is a one-time collection. The proposed information collection is for the extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 9, 2011.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2011–23542 Filed 9–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5478–N–02]

Privacy Act of 1974; Notice of a Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the Social Security Administration (SSA): Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a computer matching program between HUD and SSA.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute (5 U.S.C. 552a, as amended), HUD is notifying the public of its intent to execute, in November 2011, a new computer matching program with SSA, for a recurring matching program with HUD's Office of Public and Indian Housing (PIH) and Office of Housing. The most recent renewal of the current matching agreement expires on November 6, 2011. HUD will obtain SSA data and make the results available to (1) Program administrators such as public housing agencies (PHAs) and private owners and management agents (O/As) (collectively referred to as POAs) to enable them to verify the accuracy of income reported by the tenants (participants) of HUD rental assistance programs and (2) contract administrators (CAs) overseeing and monitoring O/A operations as well as independent public auditors (IPAs) that audit both PHAs and O/As.

DATES: *Effective Date:* The effective date of this agreement, and the date the match may begin is the later of the following dates: 40 days after HUD files a report of the subject matching program with the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget's (OMB), Office of Information and Regulatory Affairs; or 30 days after HUD publishes notice of the computer matching program in the **Federal Register**, unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective comment due date.

Comments Due Date: October 14, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Comments sent by facsimile are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act inquires: Office of the Chief Information Officer, contact Donna Robinson-Staton, Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, telephone number (202) 402–8073. For program information: Office of Public and Indian Housing: Real Estate Assessment Center, contact Nicole Faison, Program Advisor, Department of Housing and Urban Development, 451 Seventh Street, SW., Room PCFL1, Washington, DC 20410, telephone number (202) 475–7963; Office of Housing, contact Kate Brennan, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6138, Washington, DC 20410, telephone number (202) 402–6732. (These are not toll free telephone numbers). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** (FR) on March 31, 2010, at 75 FR 16171. Administrators of HUD rental assistance programs rely upon the accuracy of tenant-reported income to determine participant eligibility for and level of, rental assistance. The computer matching program may provide indicators of potential tenant unreported or under-reported income, which will require additional verification to identify inappropriate or inaccurate rental assistance, and may provide indicators for potential administrative or legal actions. The matching program will be carried out to detect inappropriate or inaccurate rental assistance under sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act, the United States Housing Act of 1937, section 101 of the Housing and Community Development Act of 1965, section 202 of the Housing Act of 1959, section 811 of the Cranston-Gonzalez National Affordable Housing Act, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act (QHWRA) of 1998. On March 11, 2009, Section 239 of HUD's 2009 Appropriations Act modified Section 904 of the Stewart B. McKinney Act of 1988, as amended, to include the Disaster Housing Assistance program (DHAP) as a covered HUD rental assistance program in HUD computer matching activities. The computer matching program will also provide for the verification of social security numbers (SSNs) of tenants participating in covered rental assistance programs. This notice provides an overview of computer matching for HUD's rental assistance programs. Specifically, the notice describes HUD's program for computer matching of its tenant data to SSA's death data, Social Security (SS) and Supplemental Security Income (SSI) benefits data.

The Computer Matching and Privacy Protection Act (CMPPA) of 1988, an amendment to the Privacy Act of 1974 (5 U.S.C. 552a), OMB's guidance on this statute entitled ''Final Guidance Interpreting the Provisions of Public Law 100–503, the CMPPA of 1988'' (OMB Guidance), and OMB Circular No. A–130 requires publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A–130, ''Transmittal Memorandum No. 4, Management of Federal Information Resources,'' prescribes Federal agency responsibilities for maintaining records about individuals. In compliance with the CMPPA and Appendix I to OMB Circular No. A–130, copies of this notice are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee of Homeland Security and Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

I. Authority

This matching program is being conducted pursuant to the Privacy Act of 1974 (5 U.S.C. 552a); 542(b) of the 1998 Appropriations Act (Pub. L. 105–65); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437z); section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the QHWRA Act of 1998 (42 U.S.C. 1437a(f)). The Housing and Community Development Act of 1987 authorizes HUD to require participants of HUD rental housing assistance programs to disclose their social security numbers (SSNs) to HUD as a condition of continuing (or initial) eligibility for participation in the programs. The QHWRA of 1998, section 508(d), 42 U.S.C. 1437a(f) authorizes the Secretary of HUD to require disclosure by the tenant to the PHA of income information received by the tenant from HUD as part of the income verification procedures of HUD. The QHWRA was amended by Public Law 106–74, which extended the disclosure requirements to participants in section 8, section 202, and section 811 assistance programs. The participants are required to disclose the HUD-provided income information to owners responsible for determining the participant's eligibility or level of benefits.

The Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification (EIV) System—Amendments; Final Rule published at 74 FR 68924 on December 29, 2009, requires program administrators to use HUD's EIV system to verify tenant income information during mandatory reexaminations or recertifications of family composition and income; and reduce administrative and subsidy payment errors in accordance with HUD administrative guidance (24 CFR 5.233).

This computer matching program also assists HUD in complying with the following federal laws, requirements, and guidance related to identifying and reducing improper payments:

1. Improper Payments Elimination and Recovery Act of 2010 (IPERA) (Pub. L. 111–204);

2. Presidential Memorandum on Enhancing Payment Accuracy Through a ''Do Not Pay List'' (June 18, 2010).

3. Office of Management and Budget M–10–13, Issuance of Part III to OMB Circular A–123, Appendix C.

4. Presidential Memorandum on Finding and Recapturing Improper Payments (March 10, 2010);

5. Reducing Improper Payments and Eliminating Waste in Federal Programs (Executive Order 13520, November 2009);

6. Improper Payments Information Act of 2002 (Pub. L. 107–300); and

7. Office of Management and Budget M–03–13, Improper Payments Information Act of 2002 Implementation Guide.

II. Covered Programs

This notice of computer matching program applies to the following rental assistance programs:

A. Disaster Housing Assistance Program (DHAP).
B. Public Housing.
C. Section 8 Housing Choice Voucher (HCV).
D. Project-Based Voucher.
E. Section 8 Moderate Rehabilitation.
F. Project-based Section 8.
1. New Construction.
2. State Agency Financed.
3. Substantial Rehabilitation.
4. Section 202/8.
5. Rural Housing Services Section 515/8.
6. Loan Management Set-Aside (LMSA).
7. Property Disposition Set-Aside (PDSA).
G. Section 101 Rent Supplement.
H. Section 202/162 Project Assistance Contract (PAC).
I. Section 202 Project Rental Assistance Contract (PRAC).
J. Section 811 Project Rental Assistance Contract (PRAC).
K. Section 236 Rental Assistance Program.
L. Section 221(d)(3) Below Market Interest Rate (BMIR).

Note: This notice does not apply to the Low Income Housing Tax Credit(LIHTC) or the Rural Housing Services Section 515 without Section 8 programs.

III. Objectives To Be Met by the Matching Program

HUD's primary objective in implementing the computer matching program is to verify the income of individuals participating in the rental assistance programs identified in Section II above, to determine the appropriate level of rental assistance, and to detect, deter, reduce and correct fraud and abuse in rental housing assistance programs. In meeting this objective, HUD also is carrying out its responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to POAs by household members is complete and accurate. HUD's various assisted housing programs, administered through POAs, require that participants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report the amounts and sources of their income at least annually. However, under the QHWRA of 1998, PHAs must offer public housing tenants the option to pay a flat rent, or an income-based rent annually. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the Changes to the Admissions and Occupancy Final Rule (March 29, 2000; 65 FR 16692) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent.

Other objectives of this computer matching program include: (1) Increasing the availability of rental assistance to individuals who meet the requirements of the rental assistance programs; (2) after removal of personal identifiers, conducting analyses of the Social Security death data and benefit information, and income reporting of program participants; and (3) measure improper payments due to under-reporting of income and/or overpayment of subsidy on behalf of deceased program participants.

IV. Program Description

HUD will disclose to SSA only tenant personal identifiers, *i.e.,* full name, Social Security number, and date of birth. SSA will match the HUD-provided personal identifiers to personal identifiers included in their various systems of records identified in Section IV of this notice. SSA will validate HUD-provided personal identifiers and provide income data to HUD only for individuals with matched personal identifiers. SSA will also provide the date of death or indication of death for any program participant whose HUD-supplied personal identifiers are successfully matched against SSA databases. For any individual whose personal identifiers do not match the personal identifiers in the SSA database, SSA will provide HUD with an error message, which will describe the reason(s) for no match (*i.e.* incorrect date of birth or surname, or invalid Social Security number). The SSA-provided data will be made available to POAs in HUD's EIV system.

A. Income Verification

Any match (*i.e.,* a ''hit'') will be further reviewed by HUD, the POAs, or the HUD Office of Inspector General (OIG) to determine whether the income reported by tenants to the program administrator is correct and complies with HUD and program administrator requirements. Specifically, current or prior SS and SSI benefit information and other data will be sought directly from tenants. For public housing and Section 8 tenant-based HCV programs, tenants will be required to provide PHAs with original SSA benefit verification letters dated within the last 60 days for comparison to computer matching results for accuracy. For multifamily housing programs, tenants must provide O/As with SSA benefit verification letters dated within the last 120 days. For SS and SSI benefit information for prior years, the tenant may be required to provide POAs with an original benefit history document from SSA if there is a dispute regarding historical income information obtained through the computer matching program.

B. Administrative or Legal Actions

Regarding all the matching described in this notice, POAs will take appropriate action in consultation with tenants to: (1) Resolve income disparities between tenant-reported and SSA-reported data; and (2) Use correct income amounts in determining rental assistance.

POAs must compute the rent in full compliance with all applicable statutes, regulations and administrator policies. POAs must ensure that they use the correct income and correctly compute the rent. In order to protect any individual whose records are used in this matching program, POAs may not suspend, terminate, reduce, or make a final denial of any rental assistance to any tenant, or take other adverse action against the tenant as a result of information produced by this matching program until: (a) The tenant has received notice from the POA of its findings and has been informed of the opportunity to contest such findings; (b) The POA has independently verified the information; and (c) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. ''Independently verified'' in item (b) means the specific information relating to the tenant that is used as a basis for an adverse action has been investigated and confirmed by the POA. (5 U.S.C. 552a) As such, POAs must resolve income discrepancies in consultation with tenants. Additionally, serious violations, which POAs, HUD Program staff, or the HUD OIG verify, should be referred for full investigation and appropriate civil and/or criminal proceedings.

With respect to SSA-provided error messages regarding HUD-provided tenant, and matched personal identifiers, the POAs' administrator/agent will confirm its file and system documentation to confirm accuracy of data elements, and make any necessary corrections. If there is no error in the documentation, the POAs' administrators/agents will notify the individual of the error and request that the individual contact the SSA to correct any SSA data errors. POAs

administrators/agents cannot correct such errors.

V. Records To Be Matched

SSA will conduct the matching of tenant SSNs and additional identifiers (surnames and dates of birth) to tenant data that HUD supplies from its systems of records known as the *Tenant Rental Assistance Certification System* (TRACS), a component of HUD's Tenant Housing Assistance and Contract Verification Data System (HUD/H–11), and the *Inventory Management System (IMS),* formerly known as the *Public and Indian Housing Information Center* (PIC) (HUD/PIH–4). The notice for these systems was published at 62 FR 11909 on March 13, 1997, and 73 FR 58256 on October 6, 2008. Program administrators utilize the form HUD–50058 module within the PIC system and the form HUD–50059 module within the TRACS to provide HUD with the tenant data.

SSA will match the tenant records included in HUD/H–11 and HUD/PIH–4 to their systems of records known as SSA's *Master Files of Social Security Number Holders, and SSN Applications* (60–0058), *Master Beneficiary Record* (60–0090), and *Supplemental Security Income Record* and Special Veterans Benefits (60–0103). The notice for these systems was published at 75 FR 82121 on December 29, 2010. HUD will place the resulting matched data into its *Enterprise Income Verification (EIV) system* (HUD/PIH–5). The notice for this system was initially published at 70 FR 41780 on July 20, 2005, and last amended on September 1, 2009 (74 FR 45235). The tenant records (one record for each family member) include these data elements: full name, SSN, and date of birth.

HUD data will also be matched to the SSA's *Master Files of Social Security Number Holders, and SSN Applications* (60–0058) for the purpose of validating SSNs of participants of HUD rental assistance programs to identify noncompliance with program eligibility requirements. HUD will compare tenant SSNs provided by POAs to reveal duplicate SSNs and potential duplicate rental assistance.

VI. Period of the Match

The computer matching program will become effective and the matching may commence after the respective Data Integrity Boards (DIBs) of both agencies approve and sign the computer matching agreement, and after, the later of the following: (1) 40 Days after report of the matching program is sent to Congress and OMB; (2) at least 30 days after publication of this notice in the **Federal Register**, unless comments are received, which would result in a contrary determination. The computer matching program will be conducted according to the computer matching agreement between HUD and SSA. The computer matching agreement for the planned matches will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the effective date of the computer matching agreement. The agreement may be renewed for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met: (1) Within three months of the expiration date, all DIBs review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and (2) All parties certify that the program has been conducted in compliance with the computer matching agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the effective date of the computer matching agreement (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 42 U.S.C. 3535(d)

Dated: September 6, 2011.

Kevin R. Cooke,

Deputy Chief Information Officer.

[FR Doc. 2011–23411 Filed 9–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5555–N–01]

Safe and Healthy Homes Investment Partnerships: Request for Comments

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: This notice solicits public comment on a proposal developed by HUD that would establish the criteria that HUD will use to designate a community as a Safe and Healthy Homes Investment Partnership (SHHIP). While designating a community as a SHHIP does not directly provide any funding, bonus points may be awarded to SHHIP designees in future HUD Notices of Funding Availability (NOFAs).

DATES: *Comments Due Date:* October 14, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding the criteria HUD should consider in designating SHHIP communities, as announced in this notice, to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0001. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

Submission of Hard Copy Comments. To ensure that the information is fully considered by all of the reviewers, each commenter submitting hard copy comments, by mail or hand delivery, should submit comments or requests to the address above, addressed to the attention of the Rules Docket Clerk. Due to security measures at all federal agencies, submission of comments or requests by mail often result in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Comments. All comments submitted to HUD regarding this notice will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the documents must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Copies of all documents submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jon L. Gant, Director, Office of Healthy Homes and Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW.,

Room 8236, Washington, DC 20410, telephone number 202–708–0310 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

In 1999, Congress appropriated funds [1] for healthy homes research and demonstration, finding that, ''the Healthy Homes approach appears superior to addressing these problems one by one.'' [2] In the report commissioned by Congress as a part of that appropriation, it was determined that ''[t]he costs of implementing multiple housing-based interventions are far lower than if they are implemented one at a time.'' [3]

Building on this finding, the Office of Healthy Homes and Lead Hazard Control created the Healthy Homes Demonstration (HHD) and Healthy Homes Technical Studies (HHTS) grant programs to support health focused home assessment and intervention initiatives and research across the country. The HHD and HHTS grant programs funded multiple intervention models, utilizing private organizations, universities, units of local government and partnerships, and researched the effectiveness of many different intervention strategies. The results of the HHD and HHTS grant programs demonstrate the value to resident health of using several environmental intervention strategies and methodologies at once, including moisture control, allergen reduction, and integrated pest management. This work has contributed to the body of science concerning the interplay of health, housing, and the environment, and promoted the adoption of health oriented building interventions by homeowners and property managers nationally. Most of these studies and demonstration programs incorporate some form of multiple housing intervention strategy.

As the grant programs demonstrate the value to resident health of using multiple intervention strategies, pilot initiatives in several cities and counties began to formalize relationships among health, energy, and housing programs. Three of these initiatives, the National Coalition to End Childhood Lead Poisoning/Green and Healthy Homes Initiative (GHHI) (13 cities and 2 tribes nationally), the CT Efficiency Healthy Homes Initiative (Connecticut) and the One Touch Healthy Homes Intervention program (New Hampshire and Omaha, NE) successfully piloted the multiple assessment/intervention strategy. These initiatives also incorporated weatherization program interventions, funded by the U.S. Department of Energy and other local agencies or utilities, into their model. Overall, these models successfully braided federal, state, local funds as well as private philanthropic support. The outcomes from these models confirm that coordinated intervention strategies lead to more economical interventions, healthier residents, and a more comprehensive and effective service delivery.

II. Description of Proposed Certification Program

The Department believes that establishing a certification system that identifies communities that provide multiple housing based interventions and leverage non-federal resources will be the most effective way to deliver housing services for protecting the health and safety of residents. To encourage HUD applicants to formalize relationships among health, energy, and housing programs, the Department has developed a proposal to encourage the development of SHHIP communities. Toward this goal, the Department anticipates providing bonus points to SHHIP communities in the competitive distribution of HUD assistance in FY2013 and future years. Before implementing this proposal through HUD's FY2013 NOFAs, the Department is seeking comment on the process and criteria for identifying a community as a SHHIP. HUD's proposal would require applicants to demonstrate the following to the satisfaction of the Department:

1. The membership of the SHHIP will be determined by the applicant's submission requesting identification as the SHHIP, as approved by the Department. Every member of the SHHIP will receive the benefits of the certification.

2. The SHHIP must include among its members at least one unit of state or local government, and one private, non-profit partner (i.e., local philanthropic organization, community-based organization, community development corporation or redevelopment authority, etc.) The SHHIP may involve more than one unit of government and more than one private partner.

3. Within the partnership, the SHHIP must include each of the following service disciplines: housing rehabilitation, energy efficiency, and healthy home/lead hazard control. The SHHIP may involve more than one entity capable of providing each service.

4. The SHHIP must have a primary mission that encompasses:

a. Improving housing in a manner that is environmentally sustainable, healthy and safe,

b. Increasing the local workforce of healthy building professionals,

c. Improving the health outcomes of the community, particularly children and the elderly,

d. Improving the way in which services are delivered to the residents of the community, and

e. Achieving program sustainability.

5. The SHHIP's service methodology must include:

a. Providing clients with one single point of contact for the delivery of services provided by the partnership,

b. Utilizing the HUD Healthy Homes Rating Tool (HHRT),

c. Supporting common multi-disciplinary workforce training,

d. Reporting data in a standardized manner into a common system operated by HUD,

e. Providing service delivery in a unified manner,

f. Identifying and eliminating barriers to effective service delivery, and

g. Maximizing the benefits of health-based housing interventions.

A certification shall generally expire 2 years from the date of issuance. A SHHIP may renew their certification by submitting a new application to the Office of Healthy Homes and Lead Hazard Control. The Department may review a certification at any time, and in its sole discretion may revoke a certification prior to expiration.

III. Request for Public Comment

HUD specifically seeks comments on the following questions:

1. Regarding the partnership agreements, what documentation should be considered sufficient to show that a partnership exists and is robust enough to merit certification?

2. Regarding the composition of the partnership, are there any specific types of non-profit partners that should be required for certification?

3. Regarding the service disciplines included in the partnership, are there additional disciplines that should be represented, and what should HUD require as proof that each discipline is represented and appropriately credentialed? Should HUD set or adopt its own standards or should HUD accept a variety of standards adopted by State, or local units of government, private

[1] Public Law 105–276, 112 Stat. 2461 (1998).

[2] H.R. Rep. No. 105–610, at 40 (1999).

[3] The Healthy Homes Initiative: A Preliminary Plan, (U.S. Dept. of Housing and Urban Development, Office of Lead Hazard Control, April 1999) Pg 5.

sector or non-profit organizations, or other federal agencies? Should a standard be set for each type of healthy home intervention?

4. Regarding the service methodology, what should HUD require as proof that the methodology will be employed?

5. Regarding the Healthy Homes Rating Tool, is this tool sufficient or should other tools be permitted and/or required?

6. Regarding the reporting of data, what data should HUD collect on units?

7. Regarding revocation of certifications, what standard should HUD use to determine if a certification should be revoked?

8. Regarding the certification process, on what grounds should an application for certification be denied? Furthermore, what appeal process should be in place for denied applications?

9. Should there be standards for maintaining certification, and if so what should be the requirement, e.g. continuing education requirements, actual on-the job-experience with units, and/or requirements that a specific number of units are treated on an annual basis that meet Healthy Homes certification Standards?

While HUD specifically seeks comments on the foregoing questions, HUD welcomes additional information that will help inform HUD's views on this issue.

Dated: September 7, 2011.

Jon L. Gant,

Director.

[FR Doc. 2011–23400 Filed 9–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Law and Order on Indian Reservations—Marriage & Dissolution Applications; Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on renewal of Office of Management and Budget (OMB) approval for the collection of information for Law and Order on Indian Reservations—Marriage & Dissolution Applications, which concerns marriage and dissolution of a marriage in a Court of Indian Offenses. The information collection is currently authorized by OMB Control Number 1076–0094, which expires December 31, 2011.

DATES: Interested persons are invited to submit comments on or before *November 14, 2011.*

ADDRESSES: You may submit comments on the information collection to Tricia Tingle, Associate Director, Tribal Justice Support, Office of Justice Services, Bureau of Indian Affairs, 1849 C Street, NW., MS–4141, Washington, DC 20240; *Tricia.Tingle@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Tricia Tingle (202) 208–2675.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs is seeking renewal of the approval for the information collection conducted under 25 CFR 11.600(c) and 11.606(c). This information collection allows the Clerk of the Court of Indian Offenses to collect personal information necessary for a Court of Indian Offenses to issue a marriage license or dissolve a marriage. Courts of Indian Offenses have been established on certain Indian reservations under the authority vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2, 9, and 13, which authorize appropriations for ''Indian judges.'' The courts provide for the administration of justice for Indian tribes in those areas where the tribes retain jurisdiction over Indians, exclusive of State jurisdiction, but where tribal courts have not been established to exercise that jurisdiction and the tribe has, by resolution or constitutional amendment, chosen to use the Court of Indian Offenses. Accordingly, Courts of Indian Offenses exercise jurisdiction under 25 CFR part 11. Domestic relations are governed by 25 CFR 11.600, which authorizes the Court of Indian Offenses to conduct and dissolve marriages. In order to obtain a marriage license in a Court of Indian Offenses, applicants must provide the six items of information listed in 25 CFR 11.600(c), including identifying information such as Social Security number, information on previous marriage, relationship to the other applicant, and a certificate of the results of any medical examination required by applicable tribal ordinances or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located. To dissolve a marriage, applicants must provide the six items of information listed in 25 CFR 11.606(c), including information on occupation and residency (to establish jurisdiction), information on whether the parties have lived apart for at least 180 days or if there is serious marital discord warranting dissolution, and information on the children of the marriage and whether the wife is pregnant (for the court to determine the appropriate level of support that may be required from the non-custodial parent). (25 CFR 11.601) Two forms are used as part of this information collection, the Marriage License Application and the Dissolution of Marriage Application.

II. Request for Comments

BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. This information collection expires December 31, 2011.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0094.

Title: Law and Order on Indian Reservations—Marriage & Dissolution Applications.

Brief Description of Collection: Submission of this information allows applicants to obtain a benefit, namely, the issuance of a marriage license or a decree of dissolution of marriage from the Court of Indian Offenses.

Type of Review: Extension without change of a currently approved collection.

Respondents: Individuals.

Number of Respondents: 260 per year, on average.

Total Number of Responses: 260 per year, on average.

Frequency of Response: On occasion.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden: 65 hours.

Dated: September 6, 2011.

Alvin Foster,

Assistant Director for Information Resources.

[FR Doc. 2011–23471 Filed 9–13–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Privacy Act of 1974; as Amended; Notice To Amend an Existing System of Records

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to an existing system of records.

SUMMARY: Pursuant to the provisions of the *Privacy Act of 1974,* as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to amend Bureau of Indian Affairs (BIA) Privacy Act system of records, ''Indian Social Services Case Files—Interior, BIA–8'' to change the name of the system to the ''Financial Assistance and Social Services—Case Management System, Interior/BIA–8,'' and update the categories of individuals and records in the system, the authorities, routine uses, and policies and practices for records storage and disposition. This system is used to provide services to individual Indians who apply for and receive social services and direct assistance from the BIA.

DATE: Comments must be received by October 24, 2011. The amendments to the system will be effective October 24, 2011.

ADDRESSES: Any person interested in commenting on this notice may do so by: submitting comments in writing to Willie Chism, Indian Affairs Privacy Act Officer, 625 Herndon Parkway, Herndon, Virginia 20170; hand-delivering comments to Willie Chism, Indian Affairs Privacy Act Officer, 625 Herndon Parkway, Herndon, Virginia 20170; or e-mailing comments to *Willie.Chism@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Deputy Bureau Director for Indian Services, Division of Human Services, 1849 C Street, NW., MS 4513–MIB, Washington, DC 20240, telephone number (202) 513–7640.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Indian Affairs (BIA) maintains the ''Indian Social Services Case Files—Interior, BIA–8'' system of records, which it is renaming the ''Financial Assistance and Social Services—Case Management System, Interior/BIA–8.'' The purpose of this system is to provide assistance to individual Indians who apply for and receive social services and direct assistance from the Bureau of Indian Affairs. The amendments to the system will include revising the system name and adding a routine use to comply with 5 U.S.C. 552a(b)(3) of the Privacy Act for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach. Other amendments to the system will include updating data in the following fields: System location, categories of individuals covered by the system; categories of records in the system; authority for maintenance of the system; routine uses of records maintained in the system, including categories of users and the purposes of such uses; policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system. This system notice was last published on August 21, 1990 (55 FR 34085).

The amendments to the system will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received which would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The *Privacy Act of 1974,* as amended (5 U.S.C. 552a), embodies fair information principles in a statutory framework governing the means by which Federal Agencies collect, maintain, use, and disseminate individuals' personal information. 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 or lawful permanent residents. As a matter of policy, DOI extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations, 43 CFR part 2.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such records within the agency. Below is the description of the Bureau of Indian Affairs, Financial Assistance and Social Services—Case Management System, Interior/BIA–8, system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

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

Dated: September 1, 2011.

Willie S. Chism,

Indian Affairs Privacy Act Officer, Assistant Secretary—Indian Affairs.

SYSTEM NAME:

Financial Assistance and Social Services—Case Management System, Interior/BIA–8.

SYSTEM LOCATION:

This system is located at the Bureau of Indian Affairs, Office of Information Operations (OIO), 1011 Indian School Rd., NW., Suite 177, Albuquerque, NM 87104. Records may also be located in regional offices providing social services and direct assistance to individual Indians.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or are receiving social services or direct

assistance from the BIA, including children, adults, elderly, and family members; individuals who provide services such as foster care, residential care, guardianship, and adoption subsidy; and individuals who provide services from funeral homes, local businesses and other Federal, state, local and tribal provider agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records and information pertaining directly to individuals including name, Social Security Number, Date of Birth, Date of Death, Tribal Enrollment Information, Individual Indian Monies (IIM) Trust Account Information, telephone number, address, aliases, marital status, financial and educational information, and account number. Records also includes information on business entities, organizations, individuals, and Federal, state, local or tribal agencies that provide social services or assistance to individuals covered by this system. Other records may include case files and related card files giving history of social services and direct assistance to individual Indians, and records concerning individuals which have arisen as a result of that individual's receipt of payment or overpayment of direct assistance funds which the individual was not entitled and/or for the misuse of funds disbursed under the direct entitlement program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

25 U.S.C. 13, the *Snyder Act of 1924;* 25 CFR part 20, Financial Assistance and Social Services Program; 25 CFR Part 23, Indian Child Welfare Act; and 25 CFR Part 115, Trust Funds for Tribes and Individual Indians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purposes of the system are (a) To provide individual records on social services and direct assistance to individual Indians; (b) to provide management with an automated information system for program planning, management utilization, and adequate reporting for performance and compliance management; (c) to improve the case worker's productivity and decision-making process by providing more complete case information, while enabling better resource management; (d) to automate the application process and case workflow to ensure compliance with eligibility criteria; (e) to provide adequate tracking and record-keeping; and (f) to support the financial payments to eligible Indian clientele.

Disclosures outside DOI may be made without the consent of the individual to whom the record pertains under the routine uses listed below:

(1) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(4) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(5) To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(6) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(7) To state and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(8) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(9) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs whether maintained by the Department or another agency or entity that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(11) To the Department of the Treasury to recover debts owed to the United States.

(12) To the news media when the disclosure is compatible with the purpose for which the records were compiled.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

(14) To another Federal agency, state or local government, Indian tribal group, or to any individual or establishment that will have jurisdiction whether by contract to the BIA, by assumption of trust responsibilities or by other means,

for social services programs now controlled by the BIA.

(15) To another Federal agency, state or local government, or Indian tribal governmental officials responsible for administering child protective services in carrying out his or her official duties.

(16) To a guardian or guardian ad litem of a child named in the report.

(17) To another Federal agency, state or local government, or Indian tribal agencies authorized to care for, treat, or supervise abused or neglected children whose policies also require confidential treatment of information.

(18) To members of community child protective teams for the purposes of establishing a diagnosis, formulating a treatment plan, monitoring the plan, investigating report of suspected physical child abuse or neglect and making recommendations to the appropriate court of competent jurisdiction, whose policies also require confidential treatment of information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in paper form in file folders stored in file cabinets, and electronic media such as personal computers, magnetic disk, diskette, and computer tapes. The electronic records are contained in removable drives, computers, email and electronic databases.

RETRIEVABILITY:

Information within this system can be retrieved by an individual's first name, last name, Social Security Number, Date of Birth, Date of Death, Tribal Enrollment Information, IIM Trust Account Information, telephone number, aliases and account number.

SAFEGUARDS:

Records are maintained in accordance with 43 CFR 2.51, Privacy Act safeguards for records. Access is provided on a need-to-know basis. During working hours, paper records are maintained in locked filed cabinets under the control of authorized personnel.

Electronic records are safeguarded by permissions set to ''Authenticated Users'' which requires password login. The computer servers in which records are stored are located in Department of the Interior facilities that are secured by alarm systems and off-master key access. Access granted to individuals is password protected. The Department's Privacy Act Warning notice appears on the monitor screens when users access the System. Backup tapes are stored in a locked and controlled room, in a secure off-site location. The tapes are kept on the Data Center floor for several weeks and then shipped to Iron Mountain, a secure off site location. Access to the Data Center floor is controlled by key card and only a select number of people have access. The Security Plan addresses the Department's Privacy Act minimum safeguard requirements for Privacy Act systems at 43 CFR 2.51. A Privacy Impact Assessment was conducted to ensure that Privacy Act requirements and safeguard requirements are met. The assessment verified that appropriate controls and safeguards are in place. Personnel authorized to access the system must complete all Security, Privacy, and Records management training and sign the Rules of Behavior.

RETENTION AND DISPOSAL:

Paper records are covered by Indian Affairs Records Schedule (IARS) records series 3600, and have been scheduled as permanent records under NARA Job No. N1–075–05–1 approved on March 31, 2005. Records are maintained in the office of records for a maximum of 5 years after the end of the calendar year in which the case or agreement is closed and then retired to the American Indian Records Repository which is a Federal Records Center. In accordance with the Indian Affairs Records Schedule, the subsequent legal transfer of records to the National Archives of the United States will be as jointly agreed to between the United States Department of the Interior and the National Archives and Records Administration (NARA).

A records retention schedule for the electronic records in this system is being developed and will be submitted to NARA for scheduling and approval. Pending approval by NARA, electronic records will be treated as permanent records. Data backups or copies captured on magnetic disk, diskette and computer tapes that are maintained separately from database files are temporary and are retained in accordance with General Records Schedules (GRS) 20/8 and 24/4(a).

SYSTEM MANAGER AND ADDRESS:

Deputy Bureau Director for Indian Services, Division of Human Services, 1849 C Street, NW., MS 4513–MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

An individual requesting records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request should describe the records sought as specifically as possible. The request envelope and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

The information in the system is obtained from individuals applying for or receiving social services or direct assistance from BIA; individuals providing services for foster care, residential care, guardianship, and adoption subsidy; and individuals providing services from funeral homes, local businesses, and provider agencies. The Application for Financial Assistance and Social Services and the Individual Self-Sufficiency Plan (OMB Control No. 1076–0017), signed by the client, permits the BIA to gather information from other agencies and programs, including tribal, local, state, and/or Federal programs from which the individual received services or assistance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–23340 Filed 9–13–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–09–1739–NSSI]

Call for Nominations: North Slope Science Initiative, Science Technical Advisory Panel, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces a call for nominations to serve on the North Slope Science Initiative, Science Technical Advisory Panel in accordance with the provisions of the *Federal*

Advisory Committee Act (FACA) of 1972.

DATES: All nominations must be received no later than October 14, 2011.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Ph.D, Executive Director, North Slope Science Initiative (AK–910), c/o Bureau of Land Management, Alaska State Office, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, phone (907) 271–3431, or *jpayne@blm.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the Science Technical Advisory Panel is to advise the North Slope Science Oversight Group on issues such as identifying and prioritizing inventory, monitoring and research needs, and providing other scientific information as requested by the Oversight Group. The Oversight Group consists of the Alaska Regional Directors of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Ocean Energy, Management, Regulations, and Enforcement, and National Marine Fisheries Service; the Bureau of Land Management's Alaska State Director; the Commissioners of the Alaska Departments of Fish and Game and Natural Resources; the Mayor of the North Slope Borough; and the President of the Arctic Slope Regional Corporation. Advisory members of the Oversight Group are the Regional Executive of the U.S. Geological Survey, the Alaska Director of the U.S. Arctic Research Commission, and the Regional Directors of the National Weather Service and U.S. Department of Energy, National Energy Technology Laboratory.

The Science Technical Advisory Panel will consist of a representative group of not more than 15 scientists and technical experts from diverse professions and interests, including the oil and gas industry, subsistence users, Alaska Native entities, conservation organizations, and academia, as determined by the Secretary of the Interior. The members will be selected from among, but not limited to, the following disciplines: North Slope traditional and local knowledge, landscape ecology, petroleum engineering, civil engineering, geology, botany, hydrology, limnology, habitat biology, wildlife biology, biometrics, sociology, cultural anthropology, economics, ornithology, oceanography, fisheries biology, and climatology.

The duties of the Science Panel are solely advisory to the Oversight Group, which will give direction to the Science Technical Advisory Panel regarding priorities for decisions needed for the Department of the Interior's management. Duties could include the following:

a. Advise the Oversight Group on science planning and relevant research and monitoring projects;

b. Advise the Oversight Group on scientific information relevant to the Oversight Group's mission;

c. Review selected reports to advise the Oversight Group on their content and relevance;

d. Review ongoing scientific programs of North Slope Science Initiative (NSSI) member organizations on the North Slope at the request of the member organizations to promote compatibility in methodologies and compilation of data;

e. Advise the Oversight Group on how to ensure that scientific products generated through NSSI activities are of the highest technical quality;

f. Periodically review the North Slope Science Plan and provide recommendations for changes to the Oversight Group;

g. Provide recommendations for proposed NSSI funded inventory, monitoring and research activities to the Oversight Group;

h. Provide other scientific advice as requested by the Oversight Group; and

i. Coordinate with groups and committees appointed or requested by the Oversight Group to provide science advice, as needed.

The Executive Director, North Slope Science Initiative will serve as the Designated Federal Officer of the Science Technical Advisory Panel.

Qualifications and Proceedures Required for Nomination

All membership will consist of professionals with advanced degrees and a minimum of 5 years of work experience in Alaska in their field of expertise, preferably in the North Slope region. Professionals will be selected from among those disciplines and entities described above. Any individual or organization may nominate one or more persons to serve on the Science Technical Advisory Panel. Members will be appointed for 3-year terms. At the discretion of the Secretary of the Interior, Science Technical Advisory Panel members may be reappointed. Under current Administration policy, federally registered lobbyists may not serve on the panel.

How To Nominate

Individuals may nominate themselves to the Science Technical Advisory Panel. You may obtain nomination forms from the Executive Director of the North Slope Science Initiative (see address above), or from *http://www.northslope.org*. To make a nomination, or self nominate, you must submit a completed nomination form with a letter of reference that describes the nominee's qualifications to serve on the Science Technical Advisory Panel. The professional discipline the nominee would like to represent should be identified in the letter of nomination and in the nomination form. Nominees may be scientists and technical experts from diverse professions and interests, including the oil and gas industry, subsistence users, Alaska Native entities, conservation organizations, and academia. Nominees selected to serve on the Science Technical Advisory Panel will serve only in their professional capacity and will not serve to represent any group, agency or entity with whom they may be affiliated.

The Executive Director will collect the nomination forms and letters of reference and distribute them to the Oversight Group of the NSSI. The Oversight Group will submit their recommendations through the Bureau of Land Management to the Secretary of the Interior who has the responsibility for making the appointments.

Members of the Science Technical Advisory Panel will serve without monetary compensation. Members will be reimbursed for travel and per diem expenses.

Certification

I hereby certify that the Science Technical Advisory Panel is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities, and in compliance with Sections 348, *Energy Policy Act of 2005* (Pub. L. 109–58).

Julia Dougan,

Acting State Director.

[FR Doc. 2011–23484 Filed 9–13–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA9300000 L14300000 EU0000; CACA 52334, CACA 52759, CACA 52764]

Notice of Intent To Prepare an Amendment to the Caliente Resource Management Plan and Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the *National Environmental Policy Act of 1969,* as amended, and the *Federal Land Policy and Management Act of 1976*

(FLPMA), as amended, the Bureau of Land Management (BLM), Bakersfield Field Office, Bakersfield, California, intends to prepare an amendment to the 1997 Caliente Resource Management Plan (RMP) and an Environmental Assessment (EA) to identify three parcels of public land totaling 83.02 acres for possible direct sale. By this notice the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EA. Comments on issues may be submitted in writing until October 14, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through the local news media. In order to be included in the EA, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the EA.

ADDRESSES: Comments should be addressed to Tim Smith, BLM Bakersfield Field Manager, 3801 Pegasus Drive, Bakersfield, California 93308. Documents pertinent to this notice will be available for public review at this address during regular business hours (7:30 a.m. to 4:15 p.m.) Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: And/or to have your name added to our mailing list, contact Diane Simpson, Realty Specialist, BLM Bakersfield Field Office, telephone (661) 391–6125; address 3801 Pegasus Drive, Bakersfield, California 93308. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has received requests from the City of Maricopa, the Kaweah Delta Water Conservation District, and ARC Vineyards, LLC to purchase the following public lands, respectively, by direct sale, under the authority of Section 203 of FLPMA (43 U.S.C. 1713):

Parcel 1, requested by the City of Maricopa, is described as:

San Bernardino Meridian

T. 11 N., R. 23 W.,
Sec. 7, lot 3 in the NW1/4.

The area described contains 15.81 acres in Kern County.

Parcel 2, requested by the Kaweah Delta Water Conservation District, is described as:

Mount Diablo Meridian

T. 17 S., R. 28 E,
Sec. 4, lots 3 and 4.

The area described contains 61.28 acres in Tulare County.

Parcel 3, requested by ARC Vineyards, LLC, is described as:

San Bernardino Meridian

T. 9 N., R. 33 W.,
Sec. 20, lot 1.

The area described contains 5.93 acres in Santa Barbara County.

Parcels one and two are located in the Valley Management Area and the South Sierra Management Area, respectively, of the Caliente RMP. The Caliente RMP identifies parcels one and two for land tenure adjustment through land exchanges to consolidate natural resource values. Under the Caliente RMP, public lands identified for land tenure adjustment may also be disposed of by sale, but sales were to be considered infrequently and limited to those small parcels where the value would not warrant inclusion of the parcel in a land exchange process. Parcel three is located in the Coast Management Area of the Caliente RMP, but does not appear on the RMP maps as public land due to an error in mapping. The Caliente RMP provides that newly recognized public lands would be managed consistent with adjacent public lands, if any, and may be suitable for land tenure adjustment. All public lands in the Coast Management Area were identified as possibly being suitable for management by other agencies (*e.g.,* for conservation purposes) or land tenure adjustment in the Caliente RMP. This plan amendment will be limited to an analysis of whether the public lands described above meet the Section 203 sales criteria of FLPMA. The proposed amendment would allow for the sale of the lands described above, regardless of their potential value in any land exchange to consolidate natural resource values. This notice initiates the public scoping process to identify specific issues related to the proposed amendment and associated environmental analysis. The BLM anticipates that the EA will consider both a plan amendment and the subsequent sale of the land and has identified the following preliminary issues of concern: Mineral resources, special status species, and cultural resources. The BLM anticipates that the EA will include input from the disciplines of geology, biology and archaeology as a minimum.

The planning process begins with the publication of this notice in the **Federal Register**. The BLM will follow its planning regulations (43 CFR 1600) in processing this plan amendment.

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

Authority: 40 CFR 1501.7 and 43 CFR 1610.2(c).

Thomas Pogacnik,

Deputy State Director, Natural Resources.

[FR Doc. 2011–23481 Filed 9–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT0300000 L17110000 DT0000 24 1A]

Notice of Availability of Record of Decision for the Tropic To Hatch (Garkane) 138 kV Transmission Line Environmental Impact Statement and the Approved Grand Staircase-Escalante National Monument Management Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Tropic to Hatch (Garkane) 138 kilovolt (kV) Transmission Line Environmental Impact Statement (EIS) and the Approved Grand Staircase-Escalante National Monument Management Plan (MMP) Amendment located in Garfield County, Utah. The Utah State Director signed the ROD on September 8, 2011, which constitutes the final decision of the BLM and makes the Approved MMP Amendment effective immediately. The ROD also indicates the BLM's intent to issue a right-of-way to Garkane Energy, Inc. (Applicant) to construct and maintain the transmission line.

ADDRESSES: Copies of the ROD/Approved MMP Amendment are available upon request from the BLM's Grand Staircase-Escalante National Monument Office, 190 East Center

Kanab, Utah 84741, or via the following Web site: *http://www.blm.gov/ut/st/en/fo/grand_staircase-escalante.html;* or from the Kanab Field Office, 318 North 100 East, Kanab, Utah 84741, or at the following Web site: *http://www.blm.gov/ut/st/en/fo/kanab/*.

Copies of the ROD/Approved MMP Amendment are available for public inspection at either BLM office.

FOR FURTHER INFORMATION CONTACT: Matt Betenson, Assistant Grand Staircase-Escalante National Monument Manager for Planning and Support Services, telephone (435) 644–4309; 190 East Center, Kanab, Utah 84741; e-mail *Matt_Betenson@blm.gov.* You may also contact Harry Barber, Kanab Field Office Manager, telephone (435) 644–4600; 190 East Center, Kanab, Utah 84741; e-mail *Harry_Barber@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: After extensive environmental analysis, collaborative public processes, consideration of public comments, and application of pertinent Federal laws and policies, it is the decision of the BLM to issue a right-of-way grant to Garkane Energy, Inc. for the construction, operation, and maintenance of approximately 7.1 miles of a 138 kV transmission line and access routes for the construction of the project across public lands administered by the Grand Staircase-Escalante National Monument Office (3.7 miles) and the Kanab Field Office (3.4 miles); and to amend the Grand Staircase-Escalante National MMP to provide for such action. The right-of-way grant will authorize the use of public lands for the project for a term of 30 years, which is subject to renewal. The Approved MMP Amendment allows for the issuance of this right-of-way grant by changing a zoning decision in the MMP from Primitive Zone to a 300-foot-wide Passage Zone to accommodate an existing transmission line and route, as well as the Applicant's proposed power line. The MMP Amendment also changes the Visual Resource Management classification from a Class II to a Class III to allow for additional modifications to the landscape within the 300-foot-wide zone. Amendment of the MMP and granting the right-of-way will have minimal effect on the landforms, cultural features, or other important values specifically enumerated in the Grand Staircase-Escalante National Monument Proclamation, as they would be minimized through implementation of mitigation described in the ROD. The U.S. Forest Service, Dixie National Forest, was the lead Federal agency for completion of the EIS, with the BLM and the National Park Service serving as cooperating agencies. The agencies sought participation from the public, tribes, and local, state, and Federal agencies throughout the EIS process. In addition to the 7.1 miles of power line located on public land, the proposal, in total, encompasses another 22.3 miles of power line that traverse U.S. Forest Service, private, and state lands. A separate ROD was issued by the U.S. Forest Service in April, 2011 for granting of the special use permit across U.S. Forest Service lands. The selected alternative avoids construction of the power line across National Park Service lands.

The U.S. Forest Service and the Environmental Protection Agency (EPA) each published a Notice of Availability (NOA) of the Draft Environmental Impact Statement (EIS)/Draft MMP Amendment for public review and comment in the **Federal Register**. The U.S. Forest Service published the NOA of the Draft EIS/Draft MMP Amendment on December 8, 2009 and the EPA published the NOA of the Draft EIS/Draft MMP Amendment on December 11, 2009, which initiated a 90-day public comment period. The comment period ended on March 12, 2010. The Federal agencies received 19 submittals containing comments from government and non-governmental organizations and private citizens. The comments in each submittal were identified, analyzed, and addressed in the Final EIS. The Draft EIS analyzed four transmission line route alternatives and disclosed impacts associated with these alternatives, including: Alternative A—the Proposed Action; Alternative B—a route that paralleled the existing 69 kV route through Bryce Canyon National Park; Alternative C—the Cedar Forks Southern Route; and the No Action Alternative. The Final EIS was an abbreviated EIS that summarized the impacts of combining portions of Alternatives A and C as the Agency Preferred Alternative, and responded to public comments. The BLM's decision authorizes issuance of a right-of-way grant to Garkane Energy, Inc. for the Agency's Preferred Alternative on BLM administered lands, as analyzed in the Final EIS.The U.S. Forest Service and EPA published an NOA of the Final EIS/Proposed MMP Amendment for public review and comment in the **Federal Register** on April 8, 2011. After publication of the Final EIS/Proposed MMP Amendment, there were no protests received on the MMP Amendment during the 30-day protest period beginning April 8, 2011, and ending on May 8, 2011, pursuant to 43 CFR 1610.5–2. The Utah Governor's Office did not identify any inconsistencies between the Final EIS/Proposed MMP Amendment and state or local plans, policies, and programs during the 60-day Governor's Consistency Review, in accordance with planning regulations at 43 CFR 1610.3–2(e). As a result of the Governor's Consistency Review, no changes were made in preparing the Approved MMP Amendment.

Any party adversely affected by the decision on the right-of-way application may appeal by October 14, 2011, pursuant to 43 CFR part 4 subpart E, and 43 CFR 2801.10. If you wish to file a petition for a stay of effectiveness of the right-of-way decision during the time your appeal is being reviewed by the Interior Board of Appeals, the petition for a stay must accompany your Notice of Appeal (43 CFR 4.21 or 2801.10). The appeal and petition for a stay, if requested, must be filed with the Utah State Director at BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah, 84145–0155, by October 14, 2011. The appeal should state the specific decision(s) in the ROD which is being appealed. Please consult the appropriate regulations (43 CFR part 4, subpart E) for further appeal requirements.

Jeff Rawson

Associate State Director.

[FR Doc. 2011–23485 Filed 9–13–11; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0R03462]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on October 14, 2011.

DATES: Protests of the survey must be filed before October 14, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Rocky Mountain Region, Bureau of Indian Affairs, and was necessary to determine the boundaries of individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 3 S., R. 44 E.

The plat, in two sheets, representing the dependent resurvey of portions of the subdivisional lines, the adjusted original meanders of the former right bank of the Tongue River, downstream, through a portion of section 3, the corrective dependent resurvey of a portion of the subdivision of section 3, and the subdivision of section 3, and the survey of the meanders of the present right bank of the Tongue River, downstream, through a portion of section 3, the meanders of the former right bank of a relicted channel of the Tongue River, downstream, through a portion of section 3, the medial line of a relicted channel of the Tongue River, in section 3, and a certain division of accretion line, Township 3 South, Range 44 East, Principal Meridian, Montana, was accepted August 8, 2011.

We will place a copy of the plat, in two sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–23473 Filed 9–13–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560 L58530000 EU0000 241A; N–85660, N–89137; 11–08807; MO#4500022283; TAS: 14X5232]

Notice of Realty Action: Competitive, Sealed-Bid Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: Pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), Public Law 105–263, as amended, the Bureau of Land Management (BLM) proposes to offer one parcel of public land totaling approximately 1.25 acres in the Las Vegas Valley by competitive, sealed-bid sale at not less than the appraised fair market value (FMV). The sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) and applicable BLM land sale and mineral conveyance regulations. The proposed sale also includes one 5-acre parcel in Clark County that was offered at a previous sale, but received no bids. If not sold, any parcel described above in this Notice may be identified for sale at a later date without further legal notice.

DATES: Interested parties may submit written comments regarding the proposed sale of public land until October 31, 2011. The FMV for the parcel will be available by October 14, which is 60 days prior to the sale date.

Sealed bids may be mailed or delivered to the BLM Las Vegas Field Office beginning November 9, 2011, and must be received by the BLM no later than 4:30 p.m. Pacific Time, December 9, 2011. The bid opening for the proposed competitive sealed bid sale, if approved, will be conducted by the BLM on December 14, 2011, at 10 a.m. Pacific Time at the BLM Las Vegas Field Office at the address listed below.

ADDRESSES: Mail written comments to the BLM Las Vegas Field Office Manager, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130, or by e-mail to: *jill_pickren@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Jill Pickren at *e-mail: jill_pickren@blm.gov* or *telephone:* (702) 515–5194. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The parcel proposed for sale is bisected by the Blue Diamond Road (Highway 160) and is west of Grand Canyon Drive. The proposed parcel of public land is described as:

Mount Diablo Meridian

T. 22 S., R. 60 E.,
Sec. 19, N½NW¼NE¼SE¼NW¼.

The area described contains 1.25 acres, more or less, in Clark County.

The map delineating the proposed sale parcel is available for public review at the BLM Las Vegas Field Office at the address listed above.

The proposed sale parcel is analyzed in the Las Vegas Valley Disposal Boundary Environmental Impact Statement (EIS), and approved by Record of Decision on December 23, 2004. The proposed sale parcel, N–85660, is additionally analyzed in Environmental Assessment number DOI–BLM–NV–S010–2008–0479–EA, which tiers to the EIS. The Decision Record and Finding of No Significant Impact were signed on March 2, 2009. No comments were received.

The 5-acre parcel offered in a previous sale is identified as N–89137. This parcel will be reoffered for sale at the FMV of $1,056,000 under the terms and conditions of this Notice of Realty Action.

This proposed public sale is in conformance with the BLM Las Vegas Resource Management Plan (RMP), approved by Record of Decision on October 5, 1998. The BLM has determined that the proposed action conforms to the RMP decision LD–1 under the authority of FLPMA.

Sealed bids must be presented for the sale. Sealed-bid envelopes must be marked on the lower front left corner depicting the sale parcel serial number (N–85660) and the proposed sale date of December 14, 2011. Bids must be for not less than the federally approved FMV.

Each sealed bid shall be accompanied by a certified check, U.S. postal money order, bank draft, or cashier's check made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management'' for not less than 20

percent of the amount bid. Personal or company checks will not be accepted. The sealed-bid envelope shall also include a completed and signed Certificate of Eligibility. Certificate of Eligibility forms are available at the BLM Las Vegas Field Office at the address listed above and on the BLM Web site at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html.* Pursuant to 43 CFR 2711.3–1(c), if two or more sealed-bid envelopes containing valid bids of the same amount are received, the determination of the highest bid shall be by supplemental biddings. Supplemental bidding may be oral or sealed bids as designated by the authorized officer. Following the end of the sale, all bid deposits will be returned to the unsuccessful bidders in person or by certified mail. If a bidder purchases the parcel and defaults on the parcel, the BLM may retain the bid deposit and cancel the sale. If the high bidder is unable to consummate the transaction for any other reasons, the second highest bid may be considered. The BLM will send the successful bidder(s) a letter with detailed information for full payment.

Federal law requires that bidders must be (1) United States citizens 18 years of age or older; (2) a corporation subject to the laws of any State or of the United States; (3) an entity including, but not limited to associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or (4) a State, State instrumentality, or political subdivision authorized to hold real property. United States citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to BLM within 30 days from receipt of the high-bidder letter shall result in cancellation of the sale and forfeiture of the bid deposit.

Within 30 days of the sale, the BLM will, in writing, either accept or reject all bids received. No contractual, or other rights against the United States, may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

Terms and Conditions: Certain minerals for the parcel will be reserved in accordance with the BLM's approved Mineral Potential Report, dated January 22, 1999. Information pertaining to the reservation of minerals specific to the parcel is located in the case file and is available for public review at the BLM Las Vegas Field Office at the address listed.

The patent, when issued for sale parcel N–85660, will contain a mineral reservation to the United States for oil and gas and all saleable mineral deposits. An offer to purchase the parcel will constitute an application for mineral conveyance of the ''no known value'' mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50 non-refundable filing fee for processing the conveyance of the ''no known value'' mineral interests, which will be sold simultaneously with the surface interests.

The parcel is subject to limitations prescribed by law and regulation, and prior to patent issuance, a holder of any right-of-way within the parcel may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or an easement. The BLM will notify valid existing right-of-way holders of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easements. In accordance with Federal regulations at 43 CFR 2807.15, once notified, each valid holder may apply for the conversion of their current authorization.

The following numbered terms and conditions will appear on the conveyance document for this parcel:

1. Oil, gas, and all saleable mineral deposits on the lands in Clark County, if any, are reserved to the United States, in accordance with the Mineral Potential Report dated January 22, 1999. Permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such leasable and saleable minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. The parcel is subject to valid existing rights;

4. The parcel is subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans;

5. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of federal, State, and local laws and regulations applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, damages of any kind incurred by the United States; (4) Other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws; (5) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction; and;

6. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of any parcel will not be on a contingency basis. However, to the extent required by law, the parcel is subject to the requirements of Section 120(h) of the CERCLA.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the

prospective patentee, and costs of escrow shall be borne by the prospective patentee. Requests for all escrow instructions must be received by the BLM Las Vegas Field Office prior to 30 days before the prospective patentee's scheduled closing date. There are no exceptions.

No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale.

All name changes and supporting documentation must be received at the BLM Las Vegas Field Office 30 days from the date on the high-bidder letter by 4:30 p.m., Pacific Time. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM Las Vegas Field Office.

The remainder of the full bid price for the parcel must be paid prior to the expiration of the 180th day following the close of the sale. Payment must be submitted in the form of a certified check, U.S. postal money order, bank draft, or cashier's check made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management.'' Personal or company checks will not be accepted.

Arrangements for electronic fund transfer to BLM for payment of the balance due must be made a minimum of 2 weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM cannot accept the remainder of the bid price after the 180th day of the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of an exchange is the bidder's responsibility in accordance with Internal Revenue Service regulations. The BLM is not a party to any 1031 Exchange.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons.

The parcel, if not sold by competitive sealed bid sale, may be identified for sale at a later date without further legal notice.

On publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the parcel identified for sale. However, land use applications may be considered after the sale if the parcel is not sold. The parcel may be subject to land use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. Encumbrances of record that may appear in the BLM public files for the parcel proposed for sale are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time, Monday through Friday, at the Las Vegas Field Office, except during federally recognized holidays.

In order to determine the FMV, certain assumptions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Information concerning the sale, appraisals, reservations, procedures and conditions, CERCLA, and other environmental documents are available for review at the BLM Las Vegas Field Office.

Only written comments will be considered properly filed.

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

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any valid adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Vanessa Hice,

Acting Assistant Field Manager, Division of Lands.

[FR Doc. 2011–23486 Filed 9–13–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0811–8271; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 20, 2011. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 29, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Patrick Andrus,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Humboldt County

Chapman, John G., House, 974 10th St., Arcata, 11000713

Sacramento County

Boulevard Park (Historic Residential Suburbs in the United States, 1830–1960 MPS), Roughly bounded by B, H, 20th, 22nd & 23rd Sts., Sacramento, 11000705

NEW YORK

Niagara County

Comstock, Nathan, Jr., House (Stone Buildings of Lockport, New York MPS), 299 Old Niagara Rd., Lockport, 11000707

Rockland County

McCready, Robert W. and Mary F., House, 139 Orange Tnpk., Sloatsburg, 11000708

Rockland Road Bridge Historic District, Ferdon Ave., Rockland Rd. & S. Piermont Ave., Piermont, 11000709

Ulster County

Elliot-Buckley House, 204 Old Post Rd., Marlboro, 11000710

OHIO

Franklin County

Athletic Club of Columbus, 136 Broad St., Columbus, 11000711

PUERTO RICO

San Juan Municipality

Residencia Luis Munoz Marin, PR 877, km 0.4, San Juan, 11000712

VERMONT

Washington County

Beck and Beck Granite Shed, 30 Granite St., Barre, 11000714

VIRGINIA

Amherst County

Hanshill, 142 Leftwich Rd., Madison Heights, 11000715

WISCONSIN

Clark County

Sniteman, Charles C. and Katharyn, House, 319 Hewett St., Nellisville, 11000716

In the interest of preservation, the comment period for the following resource has been shortened to (3) three days.

INDIANA

Elkhart County

Morehouse Residential Historic District, Roughly bounded by E. Indiana, Morehouse, E. Hubbard & the W. side of Frances Aves., Elkhart, 11000706

Request for REMOVAL has been made for the following resources:

WISCONSIN

Door County

Englebert, Frank and Clara, House, 9390 Cemetery Rd., Brussels, 04000397

Price County

Bloom's Tavern, Store and House, 396 S. Avon Ave., Phillips, 85000490

[FR Doc. 2011–23418 Filed 9–13–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–805]

In the Matter of Certain Devices for Improving Uniformity Used in a Backlight Module and Components Thereof and Products Containing the Same; Notice of Institution of Investigation

Institution of investigation pursuant to 19 U.S.C. 1337.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 10, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Industrial Technology Research Institute of Taiwan and ITRI International Inc. of San Jose, California. A letter supplementing the complaint was filed on August 22, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for improving uniformity used in a backlight module and components thereof and products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,883,932 (''the '932 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 8, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain devices for improving uniformity used in a backlight module and components thereof and products containing the same that infringe one or more of claims 6, 9, and 10 of the '932 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Industrial Technology Research Institute, 195, Sec. 4, Chung Hsing Road, Chutung, Hsinchu, Taiwan 31040; ITRI International Inc., 2880 Zanker Road, Suite 109, San Jose, CA 95134.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

LG Corporation, LG Twin Towers, 20 Yeouido-dong, Yeongdeungpo-gu, Seoul, 150–721, South Korea;

LG Electronics, Inc., LG Twin Towers, 20 Yeouido-dong, Yeongdeungpo-gu, Seoul 150–721, South Korea;

LG Electronics, U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.
Issued: September 8, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–23439 Filed 9–13–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–388–391 and 731–TA–817–821 ;Second Review]

Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, Japan, and Korea; Revised schedule for the subject reviews.

AGENCY: United States International Trade Commission.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Angela M. W. Newell (202–708–5409), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On April 18, 2011, the Commission established a schedule for the conduct of the subject five-year reviews (76 FR 22725, April 22, 2011). Due to scheduling conflicts, the Commission is issuing a revised schedule.

Specifically, the Commission will hold its hearing on October 19, 2011, beginning at 10 a.m. Posthearing briefs will be due on October 28, 2011.

For further information concerning this proceeding see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: September 8, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–23438 Filed 9–13–11; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Federal Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on October 21, 2011, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Deloitte, 2901 N. Central Avenue, Suite 1200, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Deloitte, 2901 N. Central Avenue, Suite 1200, Phoenix, AZ, on October 21, 2011, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 8, 2011.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2011–23453 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cumulus Media Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Cumulus Media Inc., et al.,* Civil Action No. 1:11–cv–01619. On September 8, 2011, the United States filed a Complaint alleging that Cumulus Media Inc.'s proposed acquisition of Citadel Broadcasting Corporation would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Cumulus to divest certain broadcast radio stations in Harrisburg-Lebanon-Carlisle, Pennsylvania and Flint, Michigan, along with certain tangible and intangible assets.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (*telephone:* 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be filed with the Court and may be published in the **Federal Register**. Comments should be directed to John Read, Chief, Litigation III Section, Antitrust Division, Department of Justice, Washington, DC 20530,; (*telephone:* 202–307–0468).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, Litigation III Section, 450 Fifth Street, NW., 4th Floor, Washington, DC 20530, *Plaintiff,* v.

Cumulus Media Inc., 3280 Peachtree Road, NW., Atlanta, Georgia 30305, and

Citadel Broadcasting Corporation, 7690 West Cheyenne Avenue, Suite 220, Las Vegas, Nevada 89129, *Defendants.*

Case: 1:11–cv–01619, Assigned To: Sullivan, Emmet G., Assign. Date: 9/8/2011, Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Citadel Broadcasting Corporation (''Citadel'') by Cumulus Media Inc. (''Cumulus''), and to obtain other equitable relief. The acquisition would likely substantially lessen competition for the sale of radio advertising in certain geographic markets in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The United States alleges as follows:

I. Nature of the Action

1. By agreement dated March 10, 2011, Cumulus agreed to acquire Citadel (by acquiring all of the shares of Citadel) in a cash-and-stock deal that values Citadel at about $2.5 billion.

2. Cumulus and Citadel are two of the largest operators of broadcast radio stations in the United States. Cumulus' proposed acquisition of Citadel would make Cumulus the third largest operator of broadcast radio stations in the United States. Cumulus' and Citadel's radio stations provide substantial head-to-head competition against one another for the business of local and national companies that seek to advertise on radio stations in Harrisburg-Lebanon-Carlisle, Pennsylvania; and Flint, Michigan.

3. As alleged in greater detail below, the proposed acquisition would eliminate this substantial head-to-head competition and would result in many advertisers paying higher prices for radio advertising time. Therefore, the proposed acquisition violates Section 7 of the Clayton Act. 15 U.S.C. 18.

II. Jurisdiction and Venue

4. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

5. Cumulus and Citadel sell radio advertising, a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

6. Citadel transacts business and is found in the District of Columbia. Cumulus has consented to venue in this District. Therefore, venue is proper in this District for Cumulus and Citadel under Section 12 of the Clayton Act, 15 U.S.C. 22. Citadel and Cumulus have consented to personal jurisdiction in this District.

III. The Defendants

7. Cumulus, organized under the laws of Delaware, with headquarters in Atlanta, Georgia, is one of the four largest radio broadcast companies in the United States in terms of revenue. In 2010, Cumulus reported radio broadcast revenues of approximately $259 million.

8. Citadel, organized under the laws of Delaware, with headquarters in Las Vegas, Nevada, is one of the three largest radio broadcast companies in the United States in terms of revenue. For the period June 1, 2010 through December 31, 2010, Citadel reported net revenues of approximately $444 million.

IV. Relevant Markets

9. The relevant markets for Section 7 of the Clayton Act are the sale of radio advertising time to advertisers targeting listeners in two separate Arbitron Metro Survey Areas (''MSAs) by radio stations in those MSAs. The two MSAs are: Harrisburg-Lebanon-Carlisle, Pennsylvania, which includes Cumberland, Dauphin, Lebanon and Perry Counties in Pennsylvania (the ''Harrisburg MSA''); and Flint, Michigan, which includes Genesee County in Michigan (the ''Flint MSA'').

10. Advertisers buy radio advertising time on Cumulus and Citadel radio stations within geographic areas defined by an MSA. An MSA is the geographical unit that is widely accepted by radio stations, advertisers and advertising agencies as the standard geographic area to use in evaluating radio audience size and composition. Cumulus and Citadel radio stations in the Harrisburg and Flint MSAs generate almost all of their revenues by selling advertising time to local, regional, and national advertisers who want to reach listeners in each of those MSAs. Typically, a radio station's advertising rates are based on the station's ability, relative to competing radio stations, to attract listening audiences that have certain demographic characteristics that advertisers want to reach.

11. Many local and national advertisers purchase radio advertising time because they find such advertising preferable to advertising on other media platforms. Reasons for this include the fact that radio advertising time may be more cost-efficient and effective than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services). In addition, radio stations offer certain services or promotional opportunities to advertisers that advertisers cannot obtain as effectively using other media.

12. Local and national advertising that is placed on radio stations broadcasting into the Harrisburg or the Flint MSA is aimed at reaching listening audiences that are present in those MSAs. Radio stations that primarily broadcast into other MSAs do not provide effective access to those audiences.

13. If there were a small but significant and non-transitory increase in the price that Harrisburg and Flint radio stations sold radio advertising time to advertisers targeting listeners in the Harrisburg and Flint MSAs, advertisers would not switch enough purchases to other radio stations or forms of advertising to render the price increase unprofitable. Although some

local and national advertisers may switch some of their advertising to other radio stations or media rather than absorb a price increase in radio advertising time in the Harrisburg or Flint MSAs, the existence of such alternatives would not prevent the Harrisburg or Flint radio stations from profitably raising their prices a small but significant amount. At a minimum, Harrisburg or Flint radio stations could profitably raise prices to those advertisers that view radio targeting listeners in Harrisburg or Flint as a necessary advertising medium, or as a necessary advertising complement to other media. Radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong preferences to advertise on radio in their MSAs. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio in their MSA as particularly effective for their needs, while maintaining lower prices for other advertisers.

V. Likely Anticompetitive Effects

14. Radio station ownership in the Harrisburg and Flint MSAs is highly concentrated. Cumulus' and Citadel's combined advertising revenue shares exceed 40 percent in both the Harrisburg and Flint MSAs.

15. As articulated in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index (''HHI'') is a measure of market concentration.[1] Market concentration is often one useful indicator of the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition harming consumers. Mergers resulting in highly concentrated markets (with an HHI in excess of 2,500) that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the merger guidelines.

16. Concentration in both the Harrisburg and Flint MSAs would increase significantly as a result of the proposed acquisition. The post-acquisition HHI in the Harrisburg MSA would be approximately 3,900. The post-acquisition HHI in the Flint MSA would be over 4,000. Both of these HHIs are well above the 2,500 threshold at which the Department normally considers a market to be highly concentrated. Cumulus' proposed acquisition of Citadel would result in a substantial increase in the HHI in both markets in excess of the 200 points presumed to be anticompetitive under the merger guidelines

17. Advertisers that use radio to reach their target audiences select radio stations on which to advertise based upon a number of factors including, among others, the size and composition of a station's audience. Many advertisers seek to reach a large percentage of their target audiences by selecting those stations whose listening audience is highly correlated to their target audience. If a number of stations broadcasting in the same MSA efficiently reach a target audience, advertisers benefit from the competition among those stations to offer better prices and services.

18. Cumulus and Citadel compete for listeners in the Harrisburg and Flint MSAs. Cumulus and Citadel each have stations in those two MSAs that seek to appeal to and attract the same listening audiences. For many local and national advertisers buying radio advertising time in the Harrisburg and Flint MSAs, the Cumulus and Citadel stations are close substitutes for each other based upon their specific audience characteristics.

19. During individual price negotiations between advertisers and radio stations, advertisers often provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs.

20. During these negotiations, advertisers that desire to reach a certain target audience can gain more competitive rates by ''playing off'' Cumulus stations against Citadel stations in the Harrisburg and Flint MSAs. The proposed acquisition would end this competition.

21. Post-acquisition, if Cumulus raised prices or lowered services to those advertisers that buy advertising time on the Cumulus and Citadel stations in the Harrisburg or Flint MSAs, non-Cumulus radio stations in the Harrisburg or Flint MSAs would not be induced to change their formats to attract those audiences in sufficiently larger numbers to defeat a price increase. Successful radio stations are not likely to change a format solely in response to a small but significant price increase to advertisers by a multi-station firm such as Cumulus because they likely would lose their existing audiences. Even if less successful stations broadcasting in the Harrisburg and Flint MSAs did change format, they would still be unlikely to attract in a timely manner enough listeners to provide suitable alternatives to the post-acquisition Cumulus.

22. The entry of new radio stations into the Harrisburg and Flint MSAs would not be timely, likely or sufficient to deter the exercise of market power.

23. The effect of the proposed acquisition of Citadel by Cumulus would be to lessen competition substantially in interstate trade and commerce in violation of Section 7 of the Clayton Act.

VI. Violation Alleged

24. The United States hereby repeats and realleges the allegations of paragraphs 1 through 25 as if fully set forth herein.

25. Cumulus' proposed acquisition of Citadel would likely substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and would likely have the following effects, among others:

(a) Competition in the sale of advertising time on radio stations in the Harrisburg and Flint MSAs would be substantially lessened;

(b) Actual and potential competition in the Harrisburg and Flint MSAs between Cumulus and Citadel in the sale of radio advertising time would be eliminated; and

(c) The prices for advertising time on radio stations in the Harrisburg and Flint MSAs would likely increase, and the quality of services would likely decline.

VII. Request for Relief

The United States requests:

(a) That the Court adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) That the Court permanently enjoin and restrain the Defendants from carrying out the proposed acquisition or

[1] See U.S. Dep't of Justice, Horizontal Merger Guidelines § 5.3 (2010), available at *http://www.justice.gov/atr/public/guidelines/hmg-2010.html*. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

from entering into or carrying out any other agreement, understanding, or plan by which Citadel would be acquired by, acquire, or merge with Cumulus;

(c) That the Court award the United States the costs of this action; and

(d) That the Court award such other relief to the United States as the Court may deem just and proper.

Dated: September 8, 2011.

Respectfully submitted,
For Plaintiff United States.

Sharis A. Pozen (DC Bar #446732),
Acting Assistant Attorney General for Antitrust.

Patricia A. Brink,
Director of Civil Enforcement.

John R. Read (DC Bar #419373),
Chief.

David C. Kully (DC Bar #448763),
Assistant Chief, Litigation III Section.

Mark Merva (DC Bar #451743),
Attorney, Litigation III Section, Antitrust Division, U.S. Department of Justice 450 Fifth Street, NW., 4th Floor, Washington, DC 20530. Telephone: (202) 616–1398. *Facsimile:* (202) 514–7308. E-mail: *mark.merva@usdoj.gov.*

United States of America, *Plaintiff* v. Cumulus Media Inc., and Citadel Broadcasting Corporation;
Defendants.

Case: 1:11-cv-01619.
Assigned To: Sullivan, Emmet G.
Assign. Date: 9/8/2011.
Description: Antitrust.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on September __, 2011, seeking to enjoin Cumulus Media Inc.'s (''Cumulus'') proposed acquisition of Citadel Broadcasting Corporation (''Citadel''), alleging that the acquisition would substantially lessen competition for radio advertising in Flint, Michigan and Harrisburg-Lebanon-Carlisle, Pennsylvania in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. At the same time the Complaint was filed, the United States also filed a Preservation of Assets Stipulation and Order and a proposed Final Judgment, which, as described below, are designed to eliminate the anticompetitive effects of the proposed acquisition.

Under the terms of the proposed Final Judgment, Cumulus must divest three broadcast radio stations—WRSR (FM) licensed to Owosso, Michigan and owned by Cumulus (''WRSR''); WCAT–FM licensed to Carlisle, Pennsylvania and owned by Citadel (''WCAT''); and the assets used in the operation of WWKL (FM) licensed to Palmyra, Pennsylvania and owned by Cumulus (''WWKL'') (other than the station intellectual property), and the station intellectual property used in the operation of WTPA (FM) licensed to Mechanicsburg, Pennsylvania and owned by Cumulus (''WTPA''), including all programming contracts and rights (collectively the ''Radio Assets''). The Preservation of Assets Stipulation and Order requires that Cumulus and Citadel take steps to ensure that the Radio Assets will remain independent of and uninfluenced by Cumulus and Citadel prior to the Court's approval of the proposed Final Judgment. To ensure that competition is preserved during this time period, the Stipulation requires that the Court appoint a management trustee to serve as manager of the Radio Assets. The duties and responsibilities of the management trustee are set forth in the Stipulation. The management trustee will have the power to operate the Radio Assets in the ordinary course of business, so that they will remain independent and uninfluenced by defendants and so that the Radio Assets are preserved and operated as an ongoing and economically viable competitor to defendants and to other broadcast radio companies.

At the time the Court approves the proposed Final Judgment, pursuant to Section IV of that proposed Final Judgment, the Court will appoint a divestiture trustee who will be responsible for divesting the Radio Assets. The United States contemplates that the Court will appoint the management trustee as the divestiture trustee upon the Court's approval of the proposed Final Judgment. Unless the United States grants an extension, it is contemplated that the divestiture trustee will divest the Radio Assets to a buyer or buyers that the Department, in its sole discretion, has approved within four (4) months of the date of entry of the proposed Final Judgment. After the Radio Assets are transferred to the divestiture trustee, the divestiture trustee will continue to operate the stations independently of Cumulus and Citadel as viable ongoing businesses.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations thereof.

II. The Alleged Violation

A. The Defendants

Cumulus, organized under the laws of Delaware, with headquarters in Atlanta, Georgia, is one of the four largest radio broadcast companies in the United States in terms of revenue. In 2010, Cumulus reported radio broadcast revenues of approximately $259 million.

Citadel, organized under the laws of Delaware, with headquarters in Las Vegas, Nevada, is one of the three largest radio broadcast companies in the United States in terms of revenue. For the period June 1, 2010 through December 31, 2010, Citadel reported net revenues of approximately $444 million.

B. Description of the Events Giving Rise to the Alleged Violation

On March 10, 2011, Cumulus agreed to acquire Citadel (by acquiring all of the shares of Citadel) in a cash-and-stock deal that values Citadel at about $2.5 billion. The proposed acquisition would make Cumulus the third largest operator of broadcast radio stations in the United States. Cumulus' and Citadel's radio stations compete head-to-head against one another for the business of local and national companies that seek to purchase radio advertising time that targets listeners that are present in the Flint and Harrisburg MSAs. The proposed acquisition would eliminate that competition.

C. Anticompetitive Consequences of the Proposed Acquisition

1. Radio Advertising

The Complaint alleges that the provision of radio advertising time to advertisers targeting listeners in two separate MSAs (the Flint MSA and the Harrisburg MSA) by radio stations in those MSAs are two relevant markets for purposes of Section 7 of the Clayton Act. Advertisers buy radio advertising time on Cumulus and Citadel radio stations within geographic areas defined by an MSA. An MSA is the geographical unit that is widely accepted by radio stations, advertisers and advertising agencies as the standard geographic area to use in evaluating radio audience size and composition.

Cumulus and Citadel radio stations in the Harrisburg and Flint MSAs generate almost all of their revenues by selling advertising time to local and national advertisers who want to reach listeners present in each of those MSAs.

Typically, a radio station's advertising rates are based on the station's ability, relative to competing radio stations, to attract listening audiences that have certain demographic characteristics that advertisers want to reach.

Many local and national advertisers purchase radio advertising time because they find such advertising preferable to advertising in other media for their specific needs. For such advertisers, radio time (a) May be less expensive and more cost-efficient than other media in reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services); or (b) may offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these and other reasons, many local and national advertisers who purchase radio advertising time view radio either as a necessary advertising medium for them or as a necessary advertising complement to other media.

Local and national advertising placed on Flint and Harrisburg radio stations is aimed at reaching listening audiences in the Flint and Harrisburg MSAs. Radio stations that primarily broadcast into other MSAs do not provide effective access to audiences in the Flint and Harrisburg MSAs. If there were a small but significant increase in the price that Flint and Harrisburg radio stations sold radio advertising time to advertisers targeting listeners in the Flint and Harrisburg MSAs, advertisers would not switch enough purchases to other radio stations or forms of advertising to render the price increase unprofitable.

Although some local and national advertisers may switch some of their advertising to other radio stations or media rather than absorb a price increase for radio advertising time in the Harrisburg or Flint MSAs, the existence of such alternatives would not prevent the Harrisburg or Flint radio stations from profitably raising their prices a small but significant amount. At a minimum, Harrisburg or Flint radio stations could profitably raise prices to those advertisers that view radio targeting listeners present in Harrisburg or Flint as a necessary advertising medium, or as a necessary advertising complement to other media. Radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong preferences to advertise on radio in their MSAs. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio in their MSA as particularly effective for their needs, while maintaining lower prices for other advertisers.

2. Harm to Competition

The Complaint alleges that Cumulus' proposed acquisition of Citadel would lessen competition substantially in the sale of radio advertising time in the Flint and Harrisburg MSAs. In particular, the merger would further concentrate markets that are already highly concentrated. The Complaint alleges that Cumulus' market share in each of the Flint and Harrisburg MSAs would exceed 40 percent after the merger. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI''), which is explained in Appendix A to the Complaint, the merger would result in concentration in each of these markets in excess of 3,900 points, well above the 2,500 threshold at which the United States normally considers a market to be highly concentrated.

Furthermore, the Complaint alleges that the merger would eliminate substantial head-to-head competition between Cumulus and Citadel for advertisers seeking to reach specific audiences present in the Flint and Harrisburg MSAs. Advertisers select radio stations to reach a large percentage of their target audience based upon a number of factors, including, *inter alia,* the size of the station's audience, the characteristics of its audience, and the geographic reach of a station's signal. Many advertisers seek to reach a large percentage of their target listeners by selecting those stations whose audience best correlates to their target listeners. Today, Cumulus and Citadel each have stations in the Flint and Harrisburg MSAs that substantially compete head-to-head to reach the same target audiences. For many local and national advertisers buying time in each of those markets, the Cumulus and Citadel stations are close substitutes for each other based on their specific audience characteristics. During individual price negotiations between advertisers and radio stations, advertisers often provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs. During these negotiations, advertisers that desire to reach a certain target audience can gain more competitive rates by ''playing off'' Cumulus stations against Citadel stations in the Flint and Harrisburg MSAs. The proposed acquisition would end this competition.

Format changes are unlikely to deter the anticompetitive consequences of this transaction. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a multi-station firm such as Cumulus because they likely would lose a substantial portion of their existing audiences. Even if less successful stations did change format, they still would be unlikely to attract in a timely manner enough listeners to provide suitable alternatives to the Cumulus stations in their markets.

For all of these reasons, the Complaint alleges that Cumulus' proposed acquisition of Citadel would lessen competition substantially in the sale of radio advertising time to advertisers targeting listeners present in the Flint and Harrisburg MSAs, eliminate head-to-head competition between Cumulus and Citadel in the Flint and Harrisburg MSAs, and result in increased prices and reduced quality of service for radio advertisers in those MSAs, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will preserve competition in the sale of radio advertising time to advertisers targeting listeners in the Flint and Harrisburg MSAs by requiring substantial radio station divestitures.

A. Radio Divestitures

The proposed Final Judgment requires Cumulus to divest three broadcast radio stations—one in the Flint MSA and two in the Harrisburg MSA. The divestitures will reduce Cumulus' share in advertising revenues in the Flint and Harrisburg MSAs to less than 40 percent. The divestitures will preserve choices for advertisers and will ensure that radio advertising prices do not increase and services do not decline as a result of the transaction.

Cumulus must divest: WRSR, WCAT, and the Federal Communications Commission (''FCC'') license and broadcast signal associated with WWKL along with the intellectual property and broadcast radio programming associated with WTPA. The divestitures must be to a purchaser or purchasers acceptable to the United States in its sole discretion. Except in the case of WWKL, and unless the United States otherwise consents in writing, the divestitures will include all the assets of the stations being divested, and will be accomplished in a way that

will satisfy the United States, in its sole discretion, that such assets can and will be used as viable, ongoing commercial radio businesses. With respect to WWKL and WTPA, the divestiture will include assets sufficient to satisfy the United States, in its sole discretion, that such assets can and will be used to operate WWKL as a viable, ongoing, commercial radio business. The signal strength of that station will be 1,500 watts and the format of the station attracts listeners in the key demographic categories that advertisers desire. Thus, the WWKL/WTPA divestiture will help maintain an economically viable competitor in the Harrisburg MSA.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of Cumulus' proposed acquisition of Citadel in the Flint and Harrisburg MSAs. Nothing in the proposed Final Judgment is intended to limit the United States' ability to investigate other past or future activities of Cumulus or Citadel in the Flint and Harrisburg MSAs, or any other MSAs.

1. The Management Trustee

The Preservation of Assets Stipulation and Order, filed at the same time as the Complaint, provides for the appointment of a management trustee to oversee the operations of the Radio Assets prior to the Court's approval of the proposed Final Judgment. The United States contemplates that the Court also will appoint the management trustee as the divestiture trustee pursuant to Section IV of the proposed Final Judgment upon the Court's approval of the proposed Final Judgment.

Unless properly maintained, the value of the Radio Assets may diminish. As a result, the appointment of a management trustee is appropriate to ensure that the Radio Assets maintain their competitive viability and economic value prior to the Court's approval of the proposed Final Judgment. The management trustee will have the power to operate the Radio Assets in the ordinary course of business, so that they will remain independent and uninfluenced by defendants, and so that the Radio Assets are preserved and the related radio stations are operated as an ongoing and economically viable competitor to defendants and to other broadcast radio companies. The management trustee will preserve the confidentiality of competitively sensitive marketing, pricing, and sales information; ensure defendants' compliance with the Stipulation and the proposed Final Judgment; and maximize the value of the Radio Assets so as to permit expeditious divestiture in a manner consistent with the proposed Final Judgment.

The Stipulation provides that defendants will pay all costs and expenses of the management trustee, including the cost of consultants, accountants, attorneys, and other representatives and assistants hired by the management trustee as are reasonably necessary to carry out his or her duties and responsibilities. After the management trustee's appointment becomes effective, the management trustee will file monthly reports with the United States setting forth efforts taken to accomplish the goals of the Stipulation and the proposed Final Judgment and the extent to which defendants are fulfilling their responsibilities.

2. The Divestiture Trustee

The proposed Final Judgment provides that the Court will appoint a divestiture trustee, selected by the United States upon consultation with the FCC, to effect the divestitures of the Radio Assets and to serve until the Radio Assets are sold to one or more acquirers. Cumulus must divest WCAT and WWKL to an FCC trust in order to comply with FCC local ownership rules. The United States, having consulted with the FCC, will nominate a divestiture trustee. As part of the divestiture, defendants must relinquish any direct or indirect financial control and any direct or indirect role in management of the Radio Assets. Pursuant to Section IV of the proposed Final Judgment, the divestiture trustee will have the legal right to control the Radio Assets until they are sold to a final purchaser, subject to safeguards to prevent defendants from influencing their operation.

Section IV of the proposed Final Judgment details the requirements for the establishment of the divestiture trust, the selection and compensation of the divestiture trustee, and the responsibilities of the divestiture trustee in connection with the divestiture and operation of the Radio Assets. The divestiture trustee has the authority to accomplish divestitures at the earliest possible time and ''at such price and on such terms as are then obtainable upon reasonable effort by the trustee.''

The proposed Final Judgment provides that defendants will pay all costs and expenses of the divestiture trustee. After the divestiture trustee's appointment becomes effective, the divestiture trustee will file monthly reports with the Court and the United States setting forth the divestiture trustee's efforts to accomplish the divestitures. Section IV(H) requires the divestiture trustee to divest the Radio Assets to an acceptable purchaser or purchasers no later than four months after the assets are transferred to the divestiture trustee, unless extended by the United States. At the end of that time, if all divestitures have not been accomplished, the divestiture trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the trust or term of the divestiture trustee's appointment.

The proposed Final Judgment also requires the defendants to maintain the independence of the Radio Assets, and requires those stations to be kept separate and apart from the defendants' other radio stations. The proposed Final Judgment also contains provisions intended to ensure that these stations will remain viable and aggressive competitors after divestiture.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction. The divestitures of the Radio Assets will preserve competition to sell radio advertising time to advertisers targeting listeners present in the Flint and Harrisburg MSAs by maintaining an independent and economically viable competitor in the Flint and Harrisburg MSAs.

B. Ban on Reacquisition

The defendants may not reacquire any of the assets divested pursuant to the terms of the proposed Final Judgment during the term of the consent decree, which is for ten years unless extended by the Court. Reacquisition of any of those assets would undermine, if not negate, the benefits of the relief obtained in these markets. Accordingly, this provision is necessary to protect the integrity of the relief.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in

any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.** Written comments should be submitted to:

John R. Read, Chief, Litigation III Section, Antitrust Division. United States Department of Justice, U.S. Department of Justice, 450 Fifth Street, NW., 4th Floor, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the proposed Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered as an alternative to the proposed Final Judgment, a full trial on the merits against the defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Cumulus' proposed acquisition of Citadel. The United States is satisfied, however, that the radio station divestitures described in the proposed Final Judgment will preserve competition in the sale of radio advertising in the Flint and Harrisburg MSAs, the markets described in the Complaint. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [T]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC*

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

Commc'ns, 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; see also *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[4]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: September 8, 2011.

Respectfully submitted,

Mark A. Merva (D.C. Bar # 451743). *Trial Attorney, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., 4th Floor, Washington, DC 20530, (202) 616–1398.*

United States District Court for the District of Columbia

United States of America, *Plaintiff*: v. Cumulus Media Inc., and Citadel Broadcasting Corporation; *Defendants.*

Case: 1:11-cv-01619.
Assigned To: Sullivan, Emmet G.
Assign. Date: 9/8/2011.
Description: Antitrust.

[Proposed] Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on August XX, 2011, and the United States of America and defendants Cumulus Media Inc. (''Cumulus'') and Citadel Broadcasting Corporation (''Citadel'') (collectively ''Defendants''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

(A) ''Acquirer'' or ''Acquirers'' means the person, persons, entity or entities to whom Defendants divest all or some of the Radio Assets.

(B) ''Citadel'' means Defendant Citadel Broadcasting Corporation, a Delaware corporation with its headquarters in Las Vegas, Nevada, its successors and assigns, and its subsidiaries, divisions, groups,

[4] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(C) ''Cumulus'' means Defendant Cumulus Media Inc., a Delaware corporation with its headquarters in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(D) ''Defendants'' mean Cumulus and Citadel.

(E) ''Divestiture Cities'' means the Flint, Michigan and Harrisburg-Lebanon-Carlisle, Pennsylvania Metropolitan Survey Areas defined as ''Arbitron Markets'' in the *BIA Investing in Radio Market Report 2011.*

(F) ''WRSR'' means the broadcast radio station WRSR (FM) licensed to Owosso, Michigan owned by defendant Cumulus.

(G) ''WCAT'' means the broadcast radio station WCAT (FM) licensed to Carlisle, Pennsylvania owned by defendant Citadel.

(H) ''WWKL'' means the broadcast radio station WWKL (FM) licensed to Palmyra, Pennsylvania owned by defendant Cumulus.

(I) ''WTPA'' means the broadcast radio station WTPA (FM) licensed to Mechanicsburg, Pennsylvania owned by defendant Cumulus.

(J) ''Radio Assets'' means

(1) All right, title, and interest of Cumulus and Citadel in and to the assets, tangible or intangible, used in the operations of WRSR and WCAT, including, but not limited to: (i) All real property (owned or leased) used in the operation of each station; (ii) all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of each station; (iii) all licenses, permits, and other authorizations issued by the Federal Communications Commission (''FCC'') and other government agencies related to each station, along with all applications pending before the FCC and other governmental agencies for any new authorizations or the renewal or modification of existing authorizations for each station; (iv) all contracts, agreements, leases and commitments of Cumulus or Citadel (including those relating to programming) relating to the operation of each station; (v) all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to each station; and (vi) all logs and other records maintained by Cumulus or Citadel relating to the business of each station; save and except for any such specifically enumerated assets that are principally devoted to the operations of stations other than WRSR and WCAT or to the operation of their parent companies, and not necessary to the operation of WRSR and WCAT as viable, ongoing commercial radio broadcasting businesses;

(2) All right, title, and interest of Cumulus and Citadel in and to the assets, tangible or intangible, used in the operation of WWKL (other than WWKL's intellectual property), including (i) All real property (owned or leased) used in the operation of WWKL; (ii) all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of WWKL; (iii) all licenses, permits, and other authorizations issued by the FCC and other government agencies related to WWKL, along with all applications pending before the FCC and other governmental agencies for any new authorizations or the renewal or modification of existing authorizations for WWKL; (iv) all contracts, agreements, leases and commitments of Cumulus or Citadel relating to the operation of WWKL but excluding (a) All contracts, agreements and commitments relating to programming, and (b) all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials used in the operation of WWKL; (v) all logs and other records maintained by Cumulus or Citadel relating to the business of WWKL; save and except for any such specifically enumerated assets that are principally devoted to the operations of stations other than WWKL or to the operation of its parent company, and not necessary to the operation of WWKL as a viable, ongoing commercial radio broadcasting business;

(3) All right, title and interest of Cumulus in and to the intellectual property used in the operation of WTPA (which will be made available to the trustee in the operation and subsequent sale of WWKL), including (i) All programming contracts, agreements, and commitments; (ii) all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials used in the operation of WTPA; and (iii) records maintained by Cumulus or Citadel that identify parties who have purchased advertising time on WTPA in the prior twelve (12) months.

III. Applicability

(A) This Final Judgment applies to both Defendants, as defined above, and all other persons in active concert or participation with the Defendants who receive actual notice of this Final Judgment by personal service or otherwise.

(B) If, prior to complying with Section IV of this Final Judgment, Defendants sell, license, or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Radio Assets, Defendants shall require the Acquirer or Acquirers to be bound by the provisions of this Final Judgment.

IV. Divestitures

(A) The United States, having consulted with the FCC, will nominate a trustee to effect the divestiture of the Radio Assets and to serve until the Radio Assets are sold to one or more Acquirers. Defendants shall not object to the trustee's immediate appointment by this Court. In the event of the trustee's resignation, incapacity to act or death, this Court shall appoint another trustee, selected by the United States, after consultation with the FCC, to effect the divestiture of the Radio Assets. In this event, the United States will identify to Defendants the individual or entity it proposes to select as trustee. The United States will move the Court to approve and appoint a substitute trustee.

(B) Unless the United States otherwise consents in writing, the divestitures by the trustee shall include all of the Radio Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the divestiture will achieve the purposes of this Final Judgment and that the Radio Assets can and will be used by the Acquirer or Acquirers as part of one or more viable, ongoing commercial radio broadcasting businesses. Divestiture of the Radio Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Radio Assets will remain viable and that the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures pursuant to this Final Judgment:

(i) Shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the commercial radio broadcasting business in the Divestiture Cities; and

(ii) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer or Acquirers and Defendants gives Defendants the ability unreasonably to

raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

(C) Only the trustee shall have the right to sell the Radio Assets. The trustee shall have the power and authority to accomplish the divestitures to an Acquirer or Acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV and V of this proposed Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section IV (E) of this proposed Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

(D) Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V.

(E) The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Radio Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

(F) Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Radio Assets, and Defendants shall develop financial and other information relevant to the Radio Assets as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

(G) After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Radio Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Radio Assets.

(H) If the trustee has not accomplished the divestiture ordered under this Final Judgment within four (4) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed three (3) months. To the extent the report contains information that the trustee deems confidential, the report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

V. Notice of Proposed Divestiture

(A) Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Radio Assets, together with full details of the same.

(B) Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish to the United States any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section IV(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV shall not be consummated. Upon objection by Defendants under Section IV(D), a divestiture proposed under Section IV shall not be consummated unless approved by the Court.

VI. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV of this Final Judgment.

VII. Preservation of Assets

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Preservation of Assets Stipulation and Order entered by this Court and cease use of the Radio Assets during the period that the trustee manages the Radio Assets. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

VIII. Affidavits

(A) Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures

have been completed under Section IV, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Radio Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Radio Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including any limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

(B) Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

(C) Defendants shall keep all records of all efforts made to preserve the Radio Assets until one (1) year after the respective divestitures of WCAT, WWKL and WRSR have been completed.

IX. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(i) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(ii) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

X. No Reacquisition

Defendants shall not reacquire any part of the Radio Assets during the term of this Final Judgment.

XI. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIII. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

[FR Doc. 2011–23548 Filed 9–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–350R]

Proposed Adjustment of the Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2011

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: This notice proposes to adjust the 2011 assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Electronic comments must be submitted and written comments must be postmarked on or before October 14, 2011. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–350R'' on all electronic and written correspondence. DEA encourages all comments be submitted

electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, *Attention:* DEA **Federal Register** Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, UN Reporting and Quota Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, *Telephone:* (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''Personal Identifying Information'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''Confidential Business Information'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information'' paragraph.

Background

On December 20, 2010, DEA established the assessment of annual needs for 2011 for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 826(a) and 21 CFR 1315.11 (75 FR 79407). That Notice indicated that DEA would adjust the assessment of annual needs at a later date, if necessary, as provided in 21 CFR 1315.13.

DEA now proposes to adjust the established assessments of annual needs for 2011 for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. In proposing the adjustment, DEA has taken into account the criteria that DEA is required to consider in accordance with 21 CFR 1315.13. DEA proposes the adjustment of the assessment of annual needs for 2011 by considering (1) Changes in demand, changes in the national rate of net disposal, and changes in the rate of net disposal by the registrants holding individual manufacturing or import quotas for the chemical; (2) whether any increased demand or changes in the national and/or individual rates of net disposal are temporary, short term, or long term; (3) whether any increased demand can be met through existing inventories, increased individual manufacturing quotas, or increased importation without increasing the assessment of annual needs; (4) whether any decreased demand will result in excessive inventory accumulation by all persons registered to handle the particular chemical; and (5) other factors affecting the medical, scientific, research, industrial, and importation needs in the United States, lawful export requirements, and reserve stocks, as the Administrator finds relevant.

Other factors that DEA considered include trends as derived from information provided in applications for import, manufacturing, and procurement quotas and in import and export declarations. The inventory, acquisition (purchases), and disposition (sales) data as provided by DEA registered manufacturers and importers reflects the most current information available to DEA at the time of publication of this Notice.

Analysis

In determining whether to propose adjustments to the 2011 assessment of annual needs, DEA considered the total net disposals (*i.e.* sales) of the List I chemicals for the current and preceding two years, actual and estimated inventories, projected demand (2011), industrial use, and export requirements from updated data provided by DEA registered manufacturers and importers in procurement quota applications (DEA 250), manufacturing quota applications (DEA 189), import quota applications (DEA 488), declarations for import and export, and other information. Data considered included data submitted to DEA after the initial assessment of annual needs had been established. DEA notes that the inventory, acquisition (purchases), and disposition (sales) data provided by DEA registered manufacturers and importers reflects the most current information available. In developing the proposed 2011 revision, DEA has used the calculation methodology described previously in the 2010 and 2011 assessment of annual needs (74 FR 60294 and 75 FR 79407, respectively).

As of April 18, 2011, DEA registered manufacturers of dosage form products containing pseudoephedrine requested the authority to purchase 249,634 kg of pseudoephedrine. DEA registered manufacturers of pseudoephedrine reported sales totaling approximately 202,779 kg in 2009 and 216,724 kg in 2010; this represents a seven percent increase in sales reported by these firms from 2009 to 2010. Additionally, DEA considered information on trends in the national rate of net disposals from sales data provided by IMS Health. The initial assessment of annual needs was based on data received by DEA as of October 21, 2010. Based on the updated information provided to DEA as of April 18, 2011, DEA is proposing to increase the 2011 assessment of annual needs for pseudoephedrine (for sale) from 280,000 kg to 299,000 kg.

As of April 18, 2011, DEA registered manufacturers of phenylpropanolamine (for conversion) requested authority to purchase a total of 24,953 kg of phenylpropanolamine for the manufacture of amphetamine. DEA registered manufacturers of phenylpropanolamine reported sales of phenylpropanolamine totaling approximately 11,486 kg in 2009 and 17,086 kg in 2010; this represents a 33 percent increase in sales reported by these firms from 2009 to 2010. In 2011, DEA registered manufacturers reported

sales of 21,008 kg for 2011; when compared to 2009 this represents a 45 percent increase in sales reported by these firms. DEA notes that in 2011 there were significant increased sales of phenylpropanolamine (for conversion) for the manufacture of amphetamine. DEA believes that current reported 2011 sales of phenylpropanolamine (for conversion) supplied by DEA registered manufacturers best represent the legitimate need for phenylpropanolamine (for conversion). There were no reported exports of phenylpropanolamine (for conversion). DEA has not received any requests to synthesize phenylpropanolamine in 2011. Based on the information provided to DEA, DEA is proposing to increase the 2011 assessment of annual needs for phenylpropanolamine (for conversion) from 21,800 kg to 29,500 kg.

As of April 18, 2011, the data provided to DEA for review of ephedrine (for sale), phenylpropanolamine (for sale), and ephedrine (for conversion) demonstrated no significant changes in demand or net disposals. Thus, DEA has determined that the assessment of annual needs for these chemicals—ephedrine (for sale), phenylpropanolamine (for sale), and ephedrine (for conversion)—shall remain unchanged.

The Administrator, therefore, proposes the following adjustment of the 2011 assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine:

List I chemicals	2011 Assessment of annual needs	Proposed adjustment to the 2011 assessment of annual needs
Ephedrine (for sale)	4,200 kg	No Change.
Phenylpropanolamine (for sale)	5,300 kg	No Change.
Pseudoephedrine (for sale)	280,000 kg	299,000 kg.
Phenylpropanolamine (for conversion)	21,800 kg	29,500 kg.
Ephedrine (for conversion)	18,600 kg	No Change.

In finalizing the adjustment of the 2011 assessment of annual needs for ephedrine, pseudoephedrine and phenylpropanolamine, DEA will consider any additional changes in demand, changes in the national rate of net disposal, or changes in the rate of net disposal by the registrants holding individual manufacturing or import quotas for the chemical, in accordance with 21 CFR part 1315.

Comments

Pursuant to 21 CFR 1315.13, any interested person may submit written comments on or objections to these proposed determinations. Based on comments received in response to this Notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in her sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments and after a hearing, if one is held, the Administrator will publish in the **Federal Register** a Final Order determining any adjustment of the assessment of annual needs.

Dated: August 31, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–23499 Filed 9–13–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–353P]

Proposed Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2012

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: This notice proposes the initial year 2012 assessment of annual needs for certain List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Electronic comments must be submitted and written comments must be postmarked on or before October 14, 2011. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–353P'' on all electronic and written correspondence. DEA encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, *Attention:* DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, UN Reporting and Quota Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, *Telephone:* (202) 307–7184.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

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If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''Confidential Business Information'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

The proposed 2012 assessment of annual needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the United States to provide adequate supplies of each chemical to meet the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks of such chemicals.

In proposing the 2012 assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine, DEA has taken into account the criteria that DEA is required to consider in accordance with 21 U.S.C. 826(a) and 21 CFR 1315.11. DEA proposes the assessment of annual needs for 2012 by considering (1) Total net disposal of the chemical by all manufacturers and importers during the current and two preceding years; (2) trends in the national rate of net disposals of each chemical; (3) total actual (or estimated) inventories of the chemical and of all substances manufactured from the chemical, and trends in inventory accumulation; (4) projected demand for each chemical as indicated by procurement and import quotas requested pursuant to 21 CFR 1315.32; and (5) other factors affecting the medical, scientific, research, industrial, and importation needs in the United States, lawful export requirements, and reserve stocks, as the Administrator finds relevant.

Other factors that DEA considered include trends as derived from information provided in applications for import, manufacturing, and procurement quotas and in import and export declarations. The inventory, acquisition (purchases), and disposition (sales) data as provided by DEA registered manufacturers and importers reflects the most current information available to DEA at the time of publication of this Notice. DEA notes, pursuant to 21 CFR 1315.13 the DEA may adjust the assessments of annual needs for ephedrine, pseudoephedrine or phenylpropanolamine that has been previously fixed pursuant to 21 CFR 1315.11.

Analysis

In determining the 2012 assessments, DEA has used the calculation methodology described previously in the 2010 and 2011 assessment of annual needs (74 FR 60294 and 75 FR 79407 respectively). Additionally, DEA considered the total net disposals (*i.e.* sales) of these List I chemicals for the current and preceding two years, actual and estimated inventories, projected demand (2012), industrial use, and export requirements from data provided by DEA registered manufacturers and importers in procurement quota applications (DEA 250), manufacturing quota applications (DEA 189), import quota applications (DEA 488), and declarations for import and export. DEA notes that the inventory, acquisition (purchases) and disposition (sales) data provided by DEA registered manufacturers and importers reflects the most current information available.

In finalizing the 2012 assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine, DEA will consider the information contained in additional applications for 2012 import, manufacturing, and procurement quotas from DEA registered manufacturers and importers that DEA receives after the date of drafting this notice, June 22, 2011, as well as the comments that DEA receives in response to this proposal.

The Administrator, therefore, proposes the following assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine for 2012, expressed in kilograms of anhydrous base:

List I chemicals	Proposed year 2012 assessment of annual needs (kg)
Ephedrine (for sale)	3,400
Phenylpropanolamine (for sale)	5,200
Pseudoephedrine (for sale)	240,000
Phenylpropanolamine (for conversion)	26,200
Ephedrine (for conversion)	12,000

Comments

Pursuant to 21 CFR 1315.11, any interested person may submit written comments on or objections to these proposed determinations. Based on comments received in response to this Notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in her sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments and after a hearing, if one is held, the Administrator will publish in the **Federal Register** a Final Order determining the assessment of annual needs for 2012 of ephedrine, pseudoephedrine, and phenylpropanolamine.

Dated: September 1, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–23505 Filed 9–13–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–343R]

Controlled Substances: 2011 Proposed Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: This notice proposes to adjust the 2011 aggregate production quotas for several controlled substances in schedules I and II of the Controlled Substances Act (CSA) and separately proposes to establish aggregate production quotas for five synthetic cannabinoids temporarily controlled in Schedule I.

DATES: Electronic comments must be submitted and written comments must

be postmarked on or before October 14, 2011. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–343R'' on all electronic and written correspondence. DEA encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, UN Reporting and Quota Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (202) 307–7184.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

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Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. On September 15, 2010, a notice of proposed 2011 aggregate production quotas for certain controlled substances in schedules I and II was published in the **Federal Register** (75 FR 56137). That notice stipulated that the Administrator would adjust, as needed, the quotas in 2011 as provided for in 21 CFR 1303.13. The 2011 established aggregate production quotas were subsequently published in the **Federal Register** (75 FR 79404) on December 20, 2010.

Additionally, on March 1, 2011, the DEA Administrator published a Final Order which temporarily placed five synthetic cannabinoids in schedule I: 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200); 1-Butyl-3-(1-naphthoyl)indole (JWH-073); 1-Pentyl-3-(1-naphthoyl)indole (JWH-018); 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue) (76 FR 11075). That Final Order stated that quotas for the five substances would be ''established based on registrations granted and quota applications received pursuant to part 1303 of Title 21 of the Code of Federal Regulations.'' 76 FR 11075. Aggregate productions quotas for these temporarily scheduled substances have not previously been established.

Analysis for Proposed Revised 2011 Aggregate Production Quotas

DEA now proposes to adjust the established 2011 aggregate production quotas for some schedule I and II controlled substances. In proposing the adjustment, DEA has taken into account the criteria that DEA is required to consider in accordance with 21 CFR 1303.13. DEA proposes the adjustment of the aggregate production quotas for basic classes of schedule I and II controlled substances by considering (1) Changes in demand for the class, changes in the national rate of net disposal for the class, and changes in the rate of net disposal by the registrants holding individual manufacturing quotas for the class; (2) whether any increased demand or changes in the national and/or individual rates of net disposal are temporary, short term, or long term; (3) whether any increased demand can be met through existing inventories, increased individual manufacturing quotas, or increased importation without increasing the aggregate production quota; (4) whether any decreased demand will result in excessive inventory accumulation by all persons registered to handle the class; and (5) other factors affecting the medical, scientific, research, and industrial needs in the United States and lawful export requirements, as the Administrator finds relevant.

In determining whether to propose adjustments to the 2011 aggregate production quotas, DEA considered updated information obtained from 2010 year-end inventories, 2010 disposition data submitted by quota applicants, estimates of the medical needs of the United States, product development, and other information made available to DEA after the initial aggregate production quotas had been established. The Administrator, therefore, proposes to adjust the 2011 aggregate production quotas for some schedule I and II controlled substances, expressed in grams of anhydrous acid or base, as follows:

Basic class–schedule I	Previously established initial 2011 quotas	Proposed adjusted 2011 quotas
1-Methyl-4-phenyl-4-propionoxypiperidine	2 g	No Change.
2,5-Dimethoxyamphetamine	2 g	No Change.
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2 g	No Change.
2,5-Dimethoxy-4-n-propylthiophenethylamine	2 g	No Change.
3-Methylfentanyl	2 g	No Change.
3-Methylthiofentanyl	2 g	No Change.
3,4-Methylenedioxyamphetamine (MDA)	22 g	No Change.
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	15 g	No Change.
3,4-Methylenedioxymethamphetamine (MDMA)	22 g	No Change.
3,4,5-Trimethoxyamphetamine	2 g	No Change.
4-Bromo-2,5-dimethoxyamphetamine (DOB)	2 g	No Change.
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	2 g	No Change.
4-Methoxyamphetamine	77 g	No Change.
4-Methylaminorex	2 g	No Change.
4-Methyl-2,5-dimethoxyamphetamine (DOM)	2 g	No Change.
5-Methoxy-3,4-methylenedioxyamphetamine	2 g	No Change.
5-Methoxy-N,N-diisopropyltryptamine	2 g	No Change.
Acetyl-alpha-methylfentanyl	2 g	No Change.
Acetyldihydrocodeine	2 g	No Change.
Acetylmethadol	2 g	No Change.
Allylprodine	2 g	No Change.
Alphacetylmethadol	2 g	No Change.
Alpha-ethyltryptamine	2 g	No Change.
Alphameprodine	2 g	No Change.
Alphamethadol	2 g	No Change.
Alpha-methylfentanyl	2 g	No Change.
Alpha-methylthiofentanyl	2 g	No Change.
Alpha-methyltryptamine (AMT)	2 g	No Change.
Aminorex	2 g	No Change.
Benzylmorphine	2 g	No Change.
Betacetylmethadol	2 g	No Change.
Beta-hydroxy-3-methylfentanyl	2 g	No Change.
Beta-hydroxyfentanyl	2 g	No Change.
Betameprodine	2 g	No Change.
Betamethadol	2 g	No Change.
Betaprodine	2 g	No Change.
Bufotenine	3 g	No Change.
Cathinone	4 g	No Change.
Codeine-N-oxide	602 g	No Change.
Diethyltryptamine	2 g	No Change.
Difenoxin	3,000 g	50 g.
Dihydromorphine	3,608,000 g	No Change.
Dimethyltryptamine	7 g	No Change.
Gamma-hydroxybutyric acid	3,000,000 g	5,434,000 g.
Heroin	20 g	No Change.
Hydromorphinol	2 g	No Change.
Hydroxypethidine	2 g	No Change.
Ibogaine	5 g	No Change.
Lysergic acid diethylamide (LSD)	16 g	No Change.
Marihuana	21,000 g	No Change.
Mescaline	5 g	No Change.
Methaqualone	10 g	No Change.
Methcathinone	4 g	No Change.
Methyldihydromorphine	2 g	No Change.
Morphine-N-oxide	605 g	No Change.
N-Benzylpiperazine	2 g	No Change.
N,N-Dimethylamphetamine	2 g	No Change.
N-Ethylamphetamine	2 g	No Change.
N-Hydroxy-3,4-methylenedioxyamphetamine	2 g	No Change.
Noracymethadol	2 g	No Change.
Norlevorphanol	52 g	No Change.
Normethadone	2 g	No Change.
Normorphine	18 g	No Change.
Para-fluorofentanyl	2 g	No Change.
Phenomorphan	2 g	No Change.
Pholcodine	2 g	No Change.
Psilocybin	2 g	No Change.
Psilocyn	2 g	No Change.
Tetrahydrocannabinols	393,000 g	No Change.
Thiofentanyl	2 g	No Change.
Tilidine	10 g	No Change.
Trimeperidine	2 g	No Change.

Basic class—schedule II	Previously established initial 2011 quotas	Proposed adjusted 2011 quotas
1-Phenylcyclohexylamine	2 g	No Change.
1-Piperdinocyclohexanecarbonitrile	2 g	No Change.
4-Anilino-N-phenethyl-4-piperidine (ANPP)	2,500,000 g	1,800,000 g.
Alfentanil	8,000 g	11,600 g.
Alphaprodine	2 g	No Change.
Amobarbital	40,007 g	No Change.
Amphetamine (for conversion)	7,500,000 g	8,500,000 g.
Amphetamine (for sale)	18,600,000 g	25,300,000 g.
Cocaine	247,000 g	216,000 g.
Codeine (for conversion)	65,000,000 g	No Change.
Codeine (for sale)	39,605,000 g	No Change.
Dextropropoxyphene	92,000,000 g	7 g.
Dihydrocodeine	800,000 g	255,000 g.
Diphenoxylate	827,000 g	500,000 g.
Ecgonine	83,000 g	No Change.
Ethylmorphine	2 g	No Change.
Fentanyl	1,428,000 g	No Change.
Glutethimide	2 g	No Change.
Hydrocodone (for sale)	55,000,000 g	59,000,000 g.
Hydromorphone	3,455,000 g	No Change.
Isomethadone	11 g	2 g.
Levo-alphacetylmethadol (LAAM)	3 g	No Change.
Levomethorphan	5 g	2 g.
Levorphanol	10,000 g	3,600 g.
Lisdexamfetamine	9,000,000 g	10,400,000 g.
Meperidine	6,600,000 g	5,200,000 g.
Meperidine Intermediate-A	3 g	No Change.
Meperidine Intermediate-B	7 g	No Change.
Meperidine Intermediate-C	3 g	No Change.
Metazocine	5 g	No Change.
Methadone (for sale)	20,000,000 g	No Change.
Methadone Intermediate	26,000,000 g	No Change.
Methamphetamine	3,130,000 g	No Change.
[750,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,331,000 grams for methamphetamine mostly for conversion to a schedule III product; and 49,000 grams for methamphetamine (for sale)]		
Methylphenidate	50,000,000 g	56,000,000 g.
Morphine (for conversion)	83,000,000 g	70,000,000 g.
Morphine (for sale)	39,000,000 g	No Change.
Nabilone	10,502 g	No Change.
Noroxymorphone (for conversion)	9,000,000 g	7,200,000 g.
Noroxymorphone (for sale)	401,000 g	No Change.
Opium (powder)	230,000 g	63,000 g.
Opium (tincture)	1,500,000 g	1,000,000 g.
Oripavine	15,000,000 g	8,000,000 g.
Oxycodone (for conversion)	5,600,000 g	No Change.
Oxycodone (for sale)	105,500,000 g	98,000,000 g.
Oxymorphone (for conversion)	12,800,000 g	No Change.
Oxymorphone (for sale)	3,070,000 g	No Change.
Pentobarbital	28,000,000 g	31,000,000 g.
Phenazocine	5 g	No Change.
Phencyclidine	24 g	No Change.
Phenmetrazine	2 g	No Change.
Phenylacetone	8,000,000 g	No Change.
Racemethorphan	2 g	No Change.
Remifentanil	2,500 g	No Change.
Secobarbital	260,002 g	336,002 g.
Sufentanil	7,000 g	5,000 g.
Tapentadol	1,000,000 g	403,000 g.
Thebaine	126,000,000 g	116,000,000 g.

Aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero.

Analysis for Proposed Aggregate Production Quotas for Temporarily Scheduled Substances

The proposed year 2011 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2011 to provide adequate supplies of each substance for estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of

controlled substances for use in industrial processes.

In determining the year 2011 aggregate production quotas for the five temporarily scheduled controlled substances listed below, the Administrator considered the following factors, in accordance with 21 U.S.C. 826(a) and 21 CFR 1303.11: Total estimated net disposal of each substance by all manufacturers; total estimated inventories of the class and of all substances manufactured in the class; projected demand for such class as indicated by procurement quotas requested pursuant to 21 CFR 1303.12; and other factors affecting medical, scientific, research, and industrial needs of the United States and lawful export requirements.

DEA has received applications for registration and quota for the temporarily scheduled controlled substances listed below. In examining the information provided by the applicant(s), along with other information, DEA finds that there is a current need for these substances. The Administrator therefore proposes that the year 2011 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class–schedule I	Proposed 2011 quotas
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200)	45 g
1-Butyl-3-(1-naphthoyl)indole (JWH–073)	45 g
1-Pentyl-3-(1-naphthoyl)indole (JWH–018)	45 g
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP–47,497)	68 g
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP–47,497 C8 homologue)	53 g

Pursuant to 21 CFR part 1303, the Administrator may adjust the 2011 aggregate production quotas and individual manufacturing quotas allocated for the year.

Comments

Pursuant to 21 CFR 1303.11 and 1303.13, any interested person may submit written comments on or objections to these proposed determinations. Based on comments received in response to this Notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in her sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments and after a hearing, if one is held, the Administrator will publish in the **Federal Register** a Final Order determining any adjustment of the aggregate production quota.

Dated: September 2, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–23498 Filed 9–13–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Enhanced Traditional Jobs Demonstration

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored and proposed information collection request (ICR) titled, ''Enhanced Traditional Jobs Demonstration,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before October 14, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR would implement Enhanced Transitional Jobs Demonstration reporting and recordkeeping requirements. This reporting structure features standardized data collection for program participants and quarterly narrative, performance, and management information system report formats. All data collection and reporting will be done by grantee organizations (state or local government or faith-based and community organizations) or their sub-grantees.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on June 1, 2011 (76 FR 31639).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201108–1205–002. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title of Collection: Enhanced Traditional Jobs Demonstration.

OMB Information Collection Request Reference Number: 201108–1205–002.

Affected Public: Individuals or Households; Private Sector—Not-for-profit institutions; and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 3007.

Total Estimated Number of Responses: 6028.

Total Estimated Annual Burden Hours: 8340.

Total Estimated Annual Other Costs Burden: $0.

Dated: September 9, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–23512 Filed 9–13–11; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Renewal of the Native American Employment and Training Council (Council) Charter

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Notice is hereby given regarding the renewal of the Workforce Investment Act (WIA), Section 166 Indian and Native American program Charter that is necessary and in the public interest. Accordingly, the U.S. Department of Labor (the Department), the Employment and Training Administration (ETA) has renewed the Council Charter for two years commencing on August 31, 2011 through August 31, 2013. The Charter includes language regarding membership diversity and changes to the terms of members.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to WIA Section 166(h)(4)(C), the Council advises the Secretary on all aspects of the operation and administration of the Native American programs authorized under the Workforce Investment Act (WIA) Section 166. In addition, the Council advises the Secretary on matters that promote the employment and training needs of American Indians and Native Americans, as well as enhance the quality of life in accordance with the Indian Self-Determination Act and Education Assistance Act. The Council shall also provide guidance to the Secretary on ways for Indians, Alaska Natives, and Native Hawaiians to successfully access and obtain Department discretionary funding and participate in special initiatives.

The charter is required to be renewed every two years; the current charter expired on July 22, 2011. The Council continues to assist ETA and the Secretary to administer WIA Section 166 program policy.

Summary of Revisions: Due to Federal Advisory Committee Act (FACA) requirements and budgetary constraints, three changes were made to the charter which include the: (1) Deletion of language that appointments will no longer remain effective until a replacement is designated by the Secretary in writing; (2) reduction in Council size with membership of not less than 15 individuals; and (3) total estimated annual operating costs for this Council of approximately $110,000. The reduction in membership size will have no impact on the Council. All council members shall serve at the pleasure of the Secretary and members may be appointed, reappointed, and/or replaced, and their terms may be extended, changed, or terminated at the Secretary discretion.

FOR FURTHER INFORMATION CONTACT: Mrs. Evangeline M. Campbell, Designated Federal Officer, Office of Workforce Investment, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue, NW., Washington, DC 20210. *Telephone:* (202) 693–3737, (this is not a toll-free number).

Signed at Washington, DC, this 7th day of September 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–23368 Filed 9–13–11; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, U. S. Department of Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10 (a)(2) of the *Federal Advisory Committee Act* (FACA) (Pub. L. 92–463), as amended, and Section 166 (h)(4) of the *Workforce Investment Act* (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under WIA.

DATES: The meeting will begin at 9 a.m. (Eastern Time) on Thursday, October 6, 2011, and continue until 5 p.m. that day. The meeting will reconvene at 8:30 a.m. on Friday, October 7, 2011, and adjourn at 5 p.m. that day. The period from 3 p.m. to 5 p.m. on October 6, 2011, will be reserved for participation and presentations by members of the public.

ADDRESSES: The meeting will be held at the U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210 room C–5515, Conference Room 2.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Members of the public not present may submit a written statement on or before October 4, 2011, to be included in the record of the meeting. Statements are to be submitted to Mrs. Evangeline M. Campbell, Designated Federal Official (DFO), U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4209, Washington, DC 20210. Persons who need special accommodations should contact Mr. Craig Lewis at (202) 693–3384, at least two business days before the meeting. The formal agenda will focus on the following topics: (1) U.S. Department of Labor (DOL), Employment and Training Administration Update; (2) U.S. Department of Labor, Office of Public Engagement—Tribal Consultation Policy (TCP); (3) Office of Workforce Investment Administrator's Update; (4) DOL, Division of Indian and Native American Program Update; (5) Training and Technical Assistance; (6) Education Performance Measure; (7) Council Update; (8) Council Workgroup Reports; and (9) Council Recommendations.

FOR FURTHER INFORMATION CONTACT: Mrs. Evangeline M. Campbell, DFO, Division

of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

Signed at Washington, DC, this 9th day of September 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–23511 Filed 9–13–11; 8:45 am]

BILLING CODE 4501–FR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of August 22, 2011 through August 26, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met. TA–W–80,127; Alternative Manufacturing, Inc., Winthrop, ME: April 22, 2010.

TA–W–80,148; Lord Corporation, Cary, NC: May 3, 2011.

TA–W–80,164; Hoffmann Industries, Inc., Sinking Spring, PA: May 6, 2010.

TA–W–80,164A; Leased Workers from Mack Employment Services, Sinking Spring, PA: May 6, 2010.

TA–W–80,190; Rankin Mfg., Inc., New London, OH: May 20, 2011.

TA–W–80,224; Grays Harbor Paper, LLC, Hoquiam, WA: June 7, 2010.

TA–W–80,230; Paper Magic Group, Inc., Moosic, PA: June 13, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,289; SAFC Biosciences, Inc., Denver, PA: July 13, 2010.

TA–W–80,295; Ossur Americas, Inc., Foothill Ranch, CA: July 15, 2010.

TA–W–80,349; Philips Lighting Company, Bath, NY: August 5, 2010.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–80,337; 84 Lumber Company, Forest Grove, OR.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–80,251; Volunteer Apparel, Inc., Luttrell, TN.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–80,278; Wells Fargo Bank, N.A., Costa Mesa, CA.

TA–W–80,367; Certegy Check Services, Inc., St. Petersburg, FL.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W–80,078; First Boston Pharma, Gloucester, MA and Brockton, MA.

I hereby certify that the aforementioned determinations were issued during the period of *August 22, 2011 through August 26, 2011.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: September 1, 2011.

Michael W. Jaffe,

Certifying Officer, Office, Trade Adjustment Assistance.

[FR Doc. 2011–23501 Filed 9–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 26, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 26, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of September 2011.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

15 TAA Petitions Instituted Between 8/22/11 and 8/26/11

TA–W	Subject Firm (Petitioners)	Location	Date of Institution	Date of Petition
80381	Zimmer Surgical (Company)	Statesville, NC	08/22/11	08/16/11
80382	Westwood Aluminium Castings Inc. (Workers).	Waukesha, WI	08/22/11	08/20/11
80383	SG Printing (Workers)	Waymart, PA	08/22/11	08/19/11
80384	Leviton/Southern Devices (Workers)	Morganton, NC	08/22/11	08/19/11
80385	UBP Asset Management LLC (State/One-Stop).	New York City, NY	08/22/11	08/19/11
80386	Ansell Edmont Industrial (State/One-Stop)	Coshocton, OH	08/22/11	08/19/11
80387	Quad Graphics (Union)	Depew, NY	08/22/11	08/19/11
80388	Phoenix Trim Works, Inc. (Company)	Williamsport, PA	08/23/11	08/22/11
80389	Citibank (Workers)	Florence, KY	08/23/11	08/23/11
80390	Hancock and Moore, INC (Company)	Hickory, NC	08/25/11	08/23/11
80391	Vertis Inc. (Workers)	North Haven, CT	08/25/11	08/24/11
80392	Flextronics (Company)	Memphis, TN	08/25/11	08/24/11
80393	SOLON Corporation (Company)	Tucson, AZ	08/25/11	08/24/11
80394	Deluxe Printing Group (Workers)	Hickory, NC	08/26/11	08/16/11
80395	Simpson Lumber Company LLC. (Union)	Shelton, WA	08/26/11	08/25/11

[FR Doc. 2011–23503 Filed 9–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 26, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 26, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of August 2011.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

11 TAA PETITIONS INSTITUTED BETWEEN 8/15/11 AND 8/19/11

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80370	Boston Scientific (State/One-Stop)	Arden Hills, MN	08/15/11	08/12/11
80371	PAETEC (Workers)	Palm Harbor, FL	08/15/11	08/12/11
80372	Walgreen Co. Accounts Receivable (Workers).	Deerfield, IL	08/16/11	08/06/11
80373	Hamburg Industries (Union)	Hamburg, PA	08/17/11	08/16/11
80374	Stream Global Services (Workers)	Beaverton, OR	08/17/11	08/17/11
80375	Newton Falls Fine Paper Co., LLC (Workers).	Newton Falls, NY	08/17/11	08/15/11
80376	Nordson Corporation-Pacific Drive Facility (Company).	Norcross, GA	08/18/11	07/08/11
80377	Symantec Corporation (State/One-Stop)	Mountain View, CA	08/18/11	08/17/11
80378	Kwik–File, LLC (State/One-Stop)	Fridley, MN	08/18/11	08/16/11
80379	Hewlett-Packard Company (Workers)	Corvallis, OR	08/18/11	08/09/11
80380	Pulse Engineering (State/One-Stop)	San Diego, CA	08/19/11	08/18/11

[FR Doc. 2011–23502 Filed 9–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,232; TA–W–75,232A]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; The Travelers Indemnity Company, A Wholly-Owned Subsidiary of the Travelers Companies, Inc., Personal Insurance Division, Customer Sales and Service Business Unit, Account Processing Unit, Including Teleworkers Located Throughout the United States, Reporting to Knoxville, TN; The Travelers Indemnity Company, A Wholly-Owned Subsidiary of the Travelers Companies, Inc., Personal Insurance Division, Customer Sales and Service Business Unit, Account Processing/Underwriting Unit, Including Teleworkers Located Throughout the United States, Reporting to Syracuse, NY

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 25, 2011, applicable to workers of The Travelers Indemnity Company, a wholly-owned subsidiary of The Travelers Companies, Inc., Personal Insurance Division, Customer Sales and Service Business Unit, Account Processing Unit, Knoxville, Tennessee (subject firm). The Department's Notice was published in the **Federal Register** on April 11, 2011 (76 FR 20047). The Notice was amended on June 6, 2011 to include teleworkers located throughout the United States reporting to The Travelers Indemnity Company, Personal Insurance Division, Customer Sales and Service Business Unit, Account Processing Unit, Knoxville, Tennessee. The Notice was published in the **Federal Register** on June 15, 2011 (76 FR 35024). The Notice was corrected on June 17, 2011. The corrected Notice was published in the **Federal Register** on June 24, 2011 (76 FR 37153).

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

Information shows that the Syracuse, New York and Knoxville, Tennessee locations of the subject firm operated in the same capacity through various account processing services, and both experienced worker separations during the relevant time period due to the shift in the supply of services to India.

Accordingly, the Department is amending the certification to include workers and former workers of The Travelers Indemnity Company, a wholly-owned subsidiary of The Travelers Companies, Inc., Personal Insurance Division, Customer Sales and Service Business Unit, Account Processing/Underwriting Unit, including teleworkers located throughout the United States reporting to, Syracuse, New York.

The amended notice applicable to TA–W–75,232 is hereby issued as follows:

All workers of The Travelers Indemnity Company, a wholly-owned subsidiary of The Travelers Companies, Inc., Personal Insurance Division, Customer Sales and Service Business Unit, Account Processing Unit, including teleworkers located throughout the United States reporting to, Knoxville, Tennessee (TA–W–75,232) and all workers of The Travelers Indemnity Company, a wholly-owned subsidiary of The Travelers Companies, Inc., Personal Insurance Division, Customer Sales and Service Business Unit, Account Processing/Underwriting Unit, including teleworkers located throughout the United States reporting to, Syracuse, New York (TA–W–75,232A), who became totally or partially separated from employment on or after February 10, 2010 through March 25, 2013, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 31st day of August, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–23504 Filed 9–13–11; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–079)]

Centennial Challenges 2012 Sample Return Robot Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2451(314)(d). The 2012 Sample Return Robot Challenge is scheduled and teams that wish to compete may register. Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. The 2012 Sample Return Robot Challenge is a prize competition designed to encourage development of new technologies or application of existing technologies in unique ways to create robots that can autonomously seek out samples and return to a designated point in a set time period. Worcester Polytechnic Institute (WPI) of Worcester, Massachusetts administers the Challenge for NASA. NASA is providing the prize purse.

DATES: 2012 Sample Return Robot Challenge will be held June 15–18, 2012.

ADDRESSES: 2012 Sample Return Robot Challenge will be conducted at Worcester Polytechnic Institute, Worcester, MA.

FOR FURTHER INFORMATION CONTACT: To register for or get additional information regarding the 2012 Sample Return Robot Challenge, please visit: *http://wp.wpi.edu/challenge/.*

For general information on the NASA Centennial Challenges Program please visit: *http://www.nasa.gov/challenges.* General questions and comments regarding the program should be addressed to Dr. Larry Cooper, Centennial Challenges Program, NASA Headquarters 300 E Street, SW., Washington, DC 20546–0001. *E-mail address: larry.p.cooper@nasa.gov.*

SUPPLEMENTARY INFORMATION:

Summary

Autonomous robot rovers will seek out samples and return them to a designated point in a set time period. Samples will be randomly placed throughout the roving area. They may be placed close to obstacles, both movable and immovable. Robots will be required to navigate over unknown terrain, around obstacles, and in varied lighting conditions to identify, retrieve, and return these samples. Winners will be determined based on the number of samples returned to the designated collection point as well as the value assigned to the samples.

I. Prize Amounts

The total Sample Return Robot Challenge purse is $1,500,000 (one million five hundred thousand U.S. dollars). Prizes will be offered for entries that meet specific requirements detailed in the Rules.

II. Eligibility

To be eligible to win a prize competitors must (1) register and comply with all requirements in the

rules and team agreement; (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) shall not be a Federal entity or Federal employee acting within the scope of their employment.

III. Rules

The complete rules and team agreement for the 2012 Sample Return Robot Challenge can be found at: *http://wp.wpi.edu/challenge/.*

Dated: August 8, 2011.

Joseph Parrish,

Deputy Chief Technologist, National Aeronautics and Space Administration.

[FR Doc. 2011–23506 Filed 9–13–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, September 27, 2011.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The ONE item is open to the public.

MATTER TO BE CONSIDERED: 8205A *Marine Accident Report*—Collision of Tankship *EAGLE OTOME* with Cargo Vessel *GULL ARROW* and Subsequent Collision with the *DIXIE VENGEANCE* Tow Sabine-Neches Canal, Port Arthur, Texas, January 23, 2010.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, September 23, 2011.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by e-mail at *bingc@ntsb.gov.*

September 9, 2011.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2011–23600 Filed 9–12–11; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; NRC–2011–0215]

Detroit Edison Company, Fermi 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to Detroit Edison Company (the licensee), for operation of the Fermi 2, located in Monroe County, Michigan, in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 50.90. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Radiological Emergency Response Preparedness Plan (RERP) to increase the staff augmentation times for the Operational and Technical Support Centers-related functions from 30 to 60 minutes, and for Emergency Operations Facility (EOF)-related functions from 60 to 90 minutes.

The proposed action is in accordance with the licensee's application dated September 24, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102700478), as supplemented by letter dated March 4, 2011 (ADAMS Accession No. ML110660050).

The Need for the Proposed Action

The proposed change increases the emergency plan (EP) staff augmentation times from 30 and 60 minutes to 60 and 90 minutes. Specifically, the proposed change requests a revision to the Fermi 2 Emergency Plan Table B–1, ''Fermi 2 Emergency Response Organization [ERO],'' to increase the staff augmentation times for Technical Support Center-related functions from 30 to 60 minutes, and for EOF-related functions from 60 to 90 minutes.

The proposed change is needed to address concerns for the safety of ERO personnel when responding to the site due to the increase in population and redistribution within the 10-mile Emergency Planning Zone (EPZ). When considering that two lane roads comprise the majority of highways within the EPZ, this has created increased traffic congestion and increased traffic control delays. Consequently, personnel that respond to the site have encountered more delays than when the plant was first licensed. Additional delays may occur in the future based on continued population growth.

Improvements have been made to equipment, procedures, and training since initial approval of the Fermi 2 EP that have resulted in a significant increase in the on-shift capabilities and knowledge such there would be no degradation or loss of EP function as a result of the proposed change. A functional analysis was also performed on the effect of the proposed change on the timeliness of performing major tasks for the major functional areas of RERP plan. The analysis concluded that extension of staff augmentation times would not significantly affect the ability to perform the required tasks.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to increase the staff augmentation times for the Operational and Technical Support Centers-related functions from 30 to 60 minutes, and for EOF-related functions from 60 to 90 minutes would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the updated Safety Analysis Report. There will be no change to radioactive effluents that effect radiation exposures to plant workers and members of the public. No changes will be made to plant buildings or the site property. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region. Therefore, no changes or different types of non-

radiological environmental impacts are expected as a result of the proposed action. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

The details of the staff's safety evaluation will be provided as part of the letter to the licensee approving issuance of the license amendment.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Enrico Fermi Atomic Power Plant, Unit 2, NUREG–0769, dated August 1981, as supplemented with Addendum No. 1 in March 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on August 19, 2011, the NRC staff consulted with the State official, Mr. Ken Yale, of the Michigan Department of Natural Resources and Environment regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 24, 2010, as supplemented by letter dated March 4, 2011. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 6th day of September, 2011.

For the Nuclear Regulatory Commission.

Mahesh Chawla,

Project Manager, Plant Licensing Branch 3–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–23488 Filed 9–13–11; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting Cancellation—OPIC September 14, 2011 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 76, Number 167, Page 53702) on August 29, 2011. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., September 14, 2011 in conjunction with OPIC's September 22, 2011 Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, or via e-mail at *Connie.Downs@opic.gov.*

Dated: September 12, 2011.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2011–23611 Filed 9–12–11; 11:15 am]

BILLING CODE 3210–01–P

PEACE CORPS

Submission for OMB Review; Request for Comments

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection requests to the Office of Management and Budget (OMB) for revision of a currently approved information collection. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Peace Corps invites the general public to comment on the revision of a currently approved information collection OMB Control No. 0420–0510: Health History (PC–1789) and Report of Medical Examination (PC–1790 and PC–1790 S).

DATES: Comments must be submitted on or before November 14, 2011, 60 days from publication in the **Federal Register**.

ADDRESSES: Comments should be addressed to Denora Miller, Freedom of Information Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or e-mail at *pcfr@peacecorps.gov.* E-mail comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Health History (PC–1789) and Report of Medical Examination (PC–1790 and PC–1790 S).

OMB Control Number: 0420–0510.

Type of Information Collection: Revision of a currently approved information collection.

Respondents' obligation to reply: Voluntary.

Burden to the public: The revised Health History (PC–1789) is expected to average 30 minutes per Candidate: with an expected 10,000 Candidates completing the form. This is a total average time burden cost of $95,050. We predict the Report of Medical Examinations (PC–1790 S and PC–1790) would each take an average of 45 minutes with 3800 Invitees required to undergo these exams (Candidates who have accepted an invitation to serve). Peace Corps is unable to accurately estimate how much of this expense will be borne by Candidates but we have made an estimate of about $228,800 for medical exams.

General description of collection: The Peace Corps Act requires that Volunteers receive health examinations prior to their service. The information collected is required for consideration for Peace Corps Volunteer service. The Health Status Review is used to review the medical history of individual applicants. The Candidate completes the Health History Form (PC–1789) and submits it to the Peace Corps for a preliminary review of their health history and self identified needs for medical support. If a Candidate is invited to serve, the Candidate is sent a Report of Medical Examination (PC–1790 S) and a Report of Dental Evaluation (PC–1790 Dental S) form to be completed by the Candidate and the Candidate's examining physician and dentist. The Health History form and the Report of Medical and Dental Exam forms are reviewed in the Peace Corps

Office of Medical Services to ensure that the Candidate/Volunteer has the physical and mental capacity required of a Volunteer. At the Close of Service, a Volunteer is given a complete physical exam using Report of Medical Examination (PC–1790).

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC on September 7, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–23472 Filed 9–13–11; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–60; Order No. 841]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Gepp, Arkansas post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): September 16, 2011; *deadline for notices to intervene:* October 3, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 1, 2011, the Commission received a petition for review of the Postal Service's determination to close the Gepp post office in Gepp, Arkansas. The petition was filed online by Kathy Adams on behalf of the Concerned Patrons of Gepp Post Office (Petitioner). The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–60 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 6, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (2) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 16, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 16, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 3, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 16, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 16, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is designated officer of the Commission (Public Representative) to

represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 1, 2011	Filing of Appeal.
September 16, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 16, 2011	Deadline for the Postal Service to file any responsive pleading.
October 3, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 6, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 26, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 10, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 17, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 30, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–23517 Filed 9–13–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 6e–2 and Form N–6EI–1, SEC File No. 270–177, OMB Control No. 3235–0177.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 6e–2 (17 CFR 270.6e–2) under the Investment Company Act of 1940 (''Act'') (15 U.S.C. 80a) is an exemptive rule that provides separate accounts formed by life insurance companies to fund certain variable life insurance products, exemptions from certain provisions of the Act, subject to conditions set forth in the rule. The rule sets forth several information collection requirements.

Rule 6e–2 provides a separate account with an exemption from the registration provisions of section 8(a) of the Act if the account files with the Commission Form N–6EI–1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements (in the case of those separate accounts that elect to register), reports to contractholders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Paragraph (b)(9) of rule 6e–2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. The exemption provided in paragraph (b)(9) applies only to management accounts that offer life insurance contracts.

Since 2008, there have been no filings under paragraph (b)(9) of rule 6e–2 by management accounts. Therefore, since 2008, there has been no cost or burden to the industry regarding the information collection requirements of paragraph (b)(9) of rule 6e–2. In addition, there have been no filings of Form N–6EI–1 by separate accounts since 2008. The Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: September 8, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23385 Filed 9–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–54A, SEC File No. 270–182, OMB Control No. 3235–0237.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act''), certain investment companies can elect to be regulated as business development companies, as defined in Section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)). Under Section 54(a) of the Investment Company Act (15 U.S.C. 80a–53(a)), any company defined in Section 2(a)(48)(A) and (B) may elect to be subject to the provisions of Sections 55 through 65 of the Investment Company Act (15 U.S.C.

80a–54 to 80a–64) by filing with the Commission a notification of election, if such company has: (1) A class of equity securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''); or (2) filed a registration statement pursuant to Section 12 of the Exchange Act for a class of equity securities. The Commission has adopted Form N–54A (17 CFR 274.53) as the form for notification of election to be regulated as business development companies.

The purpose of Form N–54A is to notify the Commission that the investment company making the notification elects to be subject to Sections 55 through 65 of the Investment Company Act, enabling the Commission to administer those provisions of the Investment Company Act to such companies.

The Commission estimates that on average approximately seven business development companies file these notifications each year. Each of those business development companies need only make a single filing of Form N–54A. The Commission further estimates that this information collection imposes a burden of 0.5 hours, resulting in a total annual PRA burden of 3.5 hours. Based on the estimated wage rate, the total cost to the business development company industry of the hour burden for complying with Form N–54A would be approximately $1,120.

The collection of information under Form N–54A is mandatory. The information provided by the form is not kept confidential. 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.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23386 Filed 9–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65279; File No. SR–C2–2011–020]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PULSe Fees

September 7, 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 August 31, 2011, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') 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 this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] 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 is proposing to amend its Fees Schedule as it relates to the PULSe workstation. The text of the proposed rule change is availableon the Exchange's Web site (*http://www.c2exchange.com*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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, Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to revise the PULSe Away-Market Routing and Routing Intermediary fees. The Exchange is also proposing to expand on its past description of the away-market routing functionality available for stock orders. In addition, the Exchange is proposing to eliminate the PULSe non-standard services fee. All of these changes, which are described in more detail below, will be effective September 1, 2011.

By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of C2. In addition, the PULSe workstation provides a user with the capability to send options orders to other U.S. options exchanges and stock orders to other U.S. stock exchanges (''away market routing'').[5] To use the away-market routing functionality, a C2 Trading Permit Holder (''TPH'') must either be a PULSe Routing Intermediary or establish a relationship with a third party PULSe Routing Intermediary. A ''PULSe Routing Intermediary'' is a C2 TPH that has connectivity to, and is a member of, other options and/or stock exchanges. If a TPH sends an order from the PULSe workstation, the PULSe Routing Intermediary will route that order to the designated market on behalf of the entering TPH.

The first purpose of this proposed rule change is to reduce the PULSe Away-Market Routing fee. Currently the fee is set at $0.05 per executed contract or share equivalent. The Exchange is proposing to reduce the fee to $0.02 per contract or share equivalent.

The second purpose of this proposed rule change is to modify the PULSe Routing Intermediary fee. Currently, the Fees Schedule provides that each PULSe Routing Intermediary is charged a fee of $20 per PULSe workstation per month for each PULSe workstation that is enabled to send orders through the Routing Intermediary. However, the fee is only assessed for those workstations in which the Routing Intermediary is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] For a more detailed description of the PULSe workstation and its other functionalities, *see, e.g.,* Securities Exchange Act Release No. 63246 (November 4, 2010), 75 FR 69478 (November 12, 2010)(SR–C2–2010–007).

acting as a third-party routing intermediary for another TPH (*i.e.,* the fee is not assessed on those workstations where the Routing Intermediary is acting as a routing intermediary on its own behalf). This fee has been waived through September 30, 2011. The Exchange is proposing to amend the fee to instead provide that a Routing Intermediary will be charged a fee for utilizing the PULSe away-market routing technology of $0.02 per executed contract or share equivalent for the first 1 million contracts or share equivalent executed in a given month and $0.03 per contract or share equivalent for each additional contract or share equivalent executed in the same month. The Exchange intends to assess this fee to Routing Intermediaries whether the Routing Intermediary is routing orders on behalf of itself as a TPH or as a third party Routing Intermediary for other TPHs. The Exchange notes that the Routing Intermediary fee will not be applicable for routes to the Chicago Board Options Exchange, Incorporated (''CBOE'') or the CBOE Stock Exchange, LLC (''CBSX'') to the extent that the C2 TPH submitting the order to CBOE or CBSX is also a CBOE TPH or CBSX TPH, as applicable.[6]

The revised PULSe Routing Intermediary fee will allow for the recoupment of the costs of developing, maintaining, and supporting the PULSe workstation and related Routing Intermediary functionality and for income from the value-added services being provided through use of the PULSe workstation and related away-market routing technology. The Exchange believes the fee structure represents an equitable allocation of reasonable fees in that the same fees are applicable to all Routing Intermediaries that provide away-market routing for TPHs via the PULSe workstation. In addition, the Exchange believes that the $0.02/$0.03 Routing Intermediary fee is reasonable and appropriate in light of the fact that it is small in relation to the total costs typically incurred in routing and executing orders. The Exchange also notes that use of the PULSe workstation, and the Routing Intermediary functionality and the away-market routing technology available through the PULSe workstation, are not compulsory. In addition, the decision to function as a Routing Intermediary for PULSe purposes is discretionary, and a TPH may choose to route orders for itself or others without using the PULSe workstation. The services are offered as a convenience and are not the exclusive means available to send or route orders to C2 or intermarket.

The third purpose of this proposed rule change is to expand on our prior description of the away-market routing functionality available for stock orders. In particular, as noted above, the Exchange has previously indicated that the PULSe workstation provides a user with the capability to send stock orders to other U.S. stock exchanges through a PULSe Routing Intermediary.[7] The Exchange also notes that it may determine that the PULSe workstation would provide a user with the capability to send stock orders to other trading centers,[8] not just U.S. stock exchanges, through a Routing Intermediary.

Finally, the fourth purpose of this proposed rule change is to eliminate the fee for non-standard services, which is currently $350 per hour plus costs. Non-standard services may include time and materials for non-standard installations or modifications to PULSe to accommodate a TPH's use of PULSe with other technologies. The Exchange is proposing to eliminate the fee at this time because, given that PULSe workstation is a relatively new technology that is being fine-tuned and enhanced based on our experience with and feedback from TPHs, we find it difficult to assess which services should be considered ''non-standard'' at this point in time. (The fee was first implemented in November 2010.[9] To date, the Exchange has not identified an instance where the fee was applicable to any service considered to be non-standard and has not collected any fees under this provision.) The Exchange may determine to reintroduce a non-standard services fee in the future through another rule change filing once we gain more experience with the PULSe workstation.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among TPHs in that the same fees and fee waivers are applicable to all TPHs and Routing Intermediaries that utilize the PULSe workstation, Routing Intermediary functionality and the away-market routing services.

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 purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 [13] thereunder.

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.

[6] The PULSe workstation offers the ability to route orders to any market, including C2 affiliates CBOE and CBSX. To the extent a C2 TPH that is also a CBOE/CBSX TPH obtains a PULSe workstation through C2, it is not necessary for that TPH to obtain a separate PULSe workstation through CBOE or CBSX to route orders to CBOE or CBSX, as applicable. *See* SR–C2–2010–007, note 5, *supra*. It is also not necessary for that TPH to utilize the services of a Routing Intermediary to route orders to CBOE or CBSX, as applicable. As such, to the extent a C2 TPH is also a CBOE TPH or CBSX TPH, a Routing Intermediary fee would not be applicable because the fee is only applicable for away-market routing through a Routing Intermediary. The TPH would not be routing away through a Routing Intermediary, but instead would be submitting orders directly to C2 as a C2 TPH, CBOE as a CBOE TPH or CBSX as a CBSX TPH, as applicable, where the TPH's activity would be subject to the transaction fee schedule of C2, CBOE or CBSX, respectively. To the extent a C2 TPH is not a CBOE TPH or CBSX TPH and utilizes the services of a third party Routing Intermediary to route orders to CBOE or CBSX, as applicable, the Routing Intermediary would be subject to the fee for the C2 TPH's executions on CBOE or CBSX, as applicable.

[7] *See* note 5, *supra,* and surrounding discussion.

[8] A ''trading center,'' as provided under Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.

[9] *See* SR–C2–2010–007, note 5, *supra.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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–C2–2011–020 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–C2–2011–020. 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–C2–2011–020 and should be submitted on or before October 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23375 Filed 9–13–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65292; File No. SR–MSRB–2011–15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Interpretive Notice Concerning the Application of Rule G–17 to Municipal Advisors

September 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 24, 2011, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the SEC a proposed rule change consisting of a proposed interpretive notice (the ''Notice'') concerning the application of MSRB Rule G–17 to municipal advisors. The MSRB requests that the proposed rule change be made effective on the date that rules defining the term ''municipal advisor'' under the Exchange Act are first made effective by the Commission or such later date as the proposed rule change is approved by the Commission.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 Board 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

With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[3] the MSRB was expressly directed by Congress to protect municipal entities and obligated persons. Accordingly, the MSRB is proposing to provide interpretive guidance that addresses how Rule G–17 applies to municipal advisors when advising obligated person clients or when soliciting municipal entities on behalf of others.

A more-detailed description of the provisions of the Notice follows:

Duty to Obligated Persons; Fair Dealing. The Notice would provide that the Rule G–17 duty of fair dealing requires that the municipal advisor determine if a recommended municipal securities transaction or municipal financial product is suitable for its obligated person client, and that it provide disclosure of the material risks and characteristics of the transaction or product, as well as any incentives the municipal advisor has received for recommending the transaction or product and any other associated conflicts of interest. Further, under the Notice, the Rule G–17 duty of fair dealing would require that the municipal advisor exercise due care when providing advice to the obligated person client, and not undertake an engagement if the municipal advisor does not have the necessary skills and resources to perform its duties in respect of the engagement.

The Notice also would provide that the municipal advisor must disclose all material conflicts of interest such as those that may color its judgment and impair its ability to render unbiased advice to its obligated person client, including those existing at the time the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Public Law No. 111–203, 124 Stat. 1376 (2010).

engagement is entered into, and those discovered or arising during the course of the engagement. The municipal advisor would be required to make these disclosures in writing and, in general, to obtain the informed consent thereto by an official of the obligated person having the authority to bind the obligated person by contract with the municipal advisor. Conflicts that constituted an unfair, deceptive, or dishonest practice would preclude a municipal advisor from undertaking an engagement with an obligated person client and disclosure of such conflict would not be effective in permitting such engagement to be undertaken.

The Notice would provide that a municipal advisor is required to provide written disclosure of the amount of its direct compensation and indirect compensation (*e.g.,* amounts paid to affiliates) from the engagement, and the scope of services to be provided. The municipal advisor would also be required to provide written disclosure of the conflicts of interest associated with various forms of compensation, including the form of compensation applicable to its engagement, unless the obligated person client has required a particular form of compensation, in which case such disclosure would only need to address that particular form of compensation.

Deceptive, Dishonest or Unfair Practices. The Notice would provide that all representations made by municipal advisors to their obligated person clients, whether written or oral, must be truthful and accurate, and municipal advisors must not omit material facts, and that matters not within the personal knowledge of those preparing the response (*e.g.,* pending litigation) must be confirmed by those with knowledge of the subject matter. A municipal advisor would not be permitted to represent that it has the requisite knowledge or expertise with respect to a particular type of transaction or product if the personnel that it intends to work on the engagement do not have the requisite knowledge or expertise.

The Notice would provide that in certain cases and depending upon the specific facts and circumstances of the engagement, a municipal advisor's compensation, including payments from third parties, may be so disproportionate to the nature of the municipal advisory services to be an unfair practice in violation of Rule G–17.

The Notice would also provide that kickback arrangements, and certain fee-splitting arrangements, with underwriters or the providers of investments or services to obligated persons are unfair, dishonest, and deceptive practices that are prohibited by Rule G–17, as are payments by municipal advisors made for the purpose of obtaining or retaining municipal advisory business, other than reasonable fees paid to a municipal advisor regulated by the MSRB.

Solicitation of a Municipal Entity; Fair Dealing. The Notice would provide that, while municipal advisors are not required to exercise a fiduciary duty when soliciting municipal entities on behalf of third parties (in such capacity, a ''solicitor''), they are required to deal fairly with the municipal entities they solicit and not engage in conduct that is deceptive, dishonest, or unfair.

The Notice would provide that a solicitor must provide written disclosure of all material facts about the solicitation to the municipal entity being solicited, including, among other things, the amount and source of all compensation received by the solicitor, any payments (including in-kind) made by the solicitor to facilitate the solicitation regardless of characterization; and any relationships of the solicitor with any employees, board members, or affiliated persons of the municipal entity or its officials who may have influence over the selection of the solicitor's client.

The Notice would provide that the solicitor, if engaged by its client to present information to the municipal entity about a product or service being offered by the client, is required to disclose all material risks and characteristics of the product or service, as well as any incentives received by the solicitor (other than compensation from its client) to recommend the product or service, and any other conflicts of interest regarding the product or service.

Deceptive, Dishonest or Unfair Practices. The Notice would provide that kickbacks and fee-splitting arrangements with others, made or entered into by solicitors for the purpose of facilitating the solicitation are unfair, dishonest, and deceptive practices that violate Rule G–17. The Notice would also provide that lavish gifts and gratuities (that exceed limits set forth in MSRB Rule G–20) made to officials of the municipal entity or affiliated parties may improperly influence the decision of the municipal entity to engage the solicitor's client, and may therefore be a violation of Rule G–17.

2. Statutory Basis

The MSRB believes that the proposed interpretive notice is consistent with Section 15B(b)(2) of the Exchange Act, which provides that:

> The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act, provides that the rules of the MSRB shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act because it will protect obligated persons and municipal entities from fraudulent and manipulative acts and practices and promote just and equitable principles of trade, as well as emphasizing the duty of fair dealing owed by municipal advisors to their obligated person clients and to municipal entities when soliciting such entities on behalf of third parties. Rule G–17 has two components, one an anti-fraud prohibition, and the other a fair dealing requirement (which promotes just and equitable principles of trade). The Notice would address both components of the rule. The sections of the Notice entitled ''Duty to Obligated Persons/Deceptive, Dishonest, or Unfair Practices'' and ''Solicitation of a Municipal Entity/Deceptive, Dishonest, or Unfair Practices'' primarily would provide guidance as to conduct required to comply with the anti-fraud component of the rule and, in some cases, conduct that would violate the anti-fraud component of the rule, depending on the facts and circumstances. The sections of the Notice entitled ''Duty to Obligated Persons/Fair Dealing'' and ''Solicitation of a Municipal Entity/Fair Deaing'' primarily would provide guidance as to conduct required to comply with the fair dealing component of the rule.

Section 15B(b)(2)(L)(iv) of the Exchange Act requires that rules adopted by the Board:

not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The proposed rule change is necessary for the protection of obligated persons and municipal entities and the robust protection of investors against fraud. Many municipal advisors play a key role in the structuring of offerings of municipal securities by obligated persons through municipal entities and the preparation of offering documents used to market those securities to investors. In some cases, they advise on the appropriateness of derivatives entered into by obligated persons, the effectiveness of which may have a substantial impact on the finances of their clients. In other cases, they solicit business from public pension funds, which, if not conducted according to the highest standards, may have a substantial effect on the finances of the state and local governments that control those funds. Municipal entities, obligated persons, and investors, therefore, have a substantial interest in municipal advisors conducting their municipal advisory activities fairly and not engaging in fraudulent conduct.

Accordingly, the MSRB does not believe that the proposed rule change would impose an unreasonable burden on small municipal advisors. However, the MSRB recognizes that there are costs of compliance. That is the reason the MSRB has included Appendix A to the Notice. By using Appendix A to provide disclosure concerning compensation conflicts, small municipal advisors will satisfy the compensation disclosure requirement of the Notice without having to retain legal counsel to assist them in the preparation of such disclosure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all municipal advisors advising obligated persons or soliciting third-party business from municipal entities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On February 14, 2011, the MSRB requested comment on a draft of the Notice (the ''draft Notice''). The MSRB received comment letters from: The American Federation of State, County and Municipal Employees (''AFSCME''); B–Payne Group Financial Advisors (''B–Payne Group''); Catholic Finance Corporation (''Catholic Finance''); Municipal Regulatory Consulting LLC (''MRC''); the National Association of Independent Public Finance Advisors (''NAIPFA''); Not for Profit Capital Strategies (''Capital Strategies''); Public Financial Management (''PFM''); and the Securities Industry and Financial Markets Association (''SIFMA'').

Scope of Notice

• *Comment: Delay Provisions Until SEC Rule on Municipal Advisors Finalized.* SIFMA requested that the MSRB withdraw or delay some or all of the provisions of the draft Notice until the SEC has defined ''municipal advisor,'' after which time they asked that the MSRB afford commenters an additional opportunity to comment on the Notice.

• *MSRB Response:* Because Rule G–17 became applicable to municipal advisors on December 23, 2010, the MSRB feels it is important to provide guidance on how the rule applies to municipal advisors. The MSRB has requested that the proposed rule change be made effective on the date that rules defining the term ''municipal advisor'' under the Exchange Act are first made effective by the SEC, or such later date that the SEC approves the proposed rule change. At that time, the MSRB may propose additional guidance, if necessary.

• *Comment: Duty When Advising Obligated Persons.* Capital Strategies requested that the MSRB clarify a municipal advisor's duty when a financing alternative for a municipal advisor's obligated person client is not in the best interests of a municipal entity.

• *MSRB Response:* The MSRB determined to address these comments by revising the Notice so that it would provide (in endnote 7): ''Although a municipal advisor advising an obligated person does not have a fiduciary duty to the municipal entity that is the conduit issuer for the obligated person (but is not the client of the advisor), it still has a fair dealing duty to the municipal entity.'' Thus, when a municipal advisor is advising an obligated person, its primary obligation of fair dealing is to its client. The municipal advisor would not be required to act in the best interests of the municipal entity acting as a conduit issuer, although the advisor would be prohibited from acting in a deceptive, dishonest or unfair manner.

• *Comment: Interpretation of Fair Dealing Too Broad.* SIFMA said that the draft Notice interpreted a municipal advisor's fair dealing obligations far beyond the common understanding of ''fair dealing'' and beyond prior interpretations of fair dealing as applied to brokers, dealers, and municipal securities dealers (''dealers''). SIFMA said that the draft Notice imposed many ''fiduciary-like'' obligations on municipal advisors when advising entities other than municipal entities. SIFMA further commented that concepts of a duty of care and a duty to disclose conflicts and obtain consent have never before been interpreted to be part of a duty to deal fairly under Rule G–17, and that imposing these duties under Rule G–17 may be inconsistent with existing obligations of currently regulated persons.

• *MSRB Response:* The MSRB has determined not to make any changes to the Notice based on these comments. The MSRB notes that prior interpretations of the concept of ''fair dealing'' with respect to dealers applied to counterparty, not advisory, relationships, and that a comparison between such prior interpretations and duties applicable to an advisor would therefore be inappropriate. Further, the MSRB considered carefully the violations of fair dealing and fiduciary duty in numerous state and federal cases, as well as SEC proceedings, and determined that fair dealing obligations and fiduciary obligations in an advisory relationship were closely aligned and not as disparate as SIFMA might suggest.

Duty to Obligated Persons

Appropriateness; Due Care

• *Comment: Revise ''Appropriateness'' Standard.* SIFMA questioned whether the draft Notice created a new standard of conduct by requiring a municipal advisor to advise an obligated person client as to the appropriateness of a municipal financial product or transaction or whether ''appropriateness'' was intended by the MSRB to mean the same thing as ''suitability.'' SIFMA and MRC said that the MSRB should define the duty to be consistent with other suitability standards currently applicable to dealers.

• *MSRB Response:* The MSRB determined to address this comment by revising the Notice so that it would substitute the term ''suitability'' for the term ''appropriateness'' and to provide that the municipal advisor must have reasonable grounds for believing that a recommended municipal securities transaction or municipal financial product is suitable for the client, based on certain information about the client and the product or transaction known by the municipal advisor.

• *Comment: Address Competing Standards.* SIFMA said that the MSRB should not impose an appropriateness standard on regulated entities that were already subject to a competing standard. SIFMA said that the Rule G–17 obligation to advise obligated person clients of material risks should be deemed satisfied if the municipal advisor complied with similar requirements under another applicable regulatory regime. Further, SIFMA said that this duty should be limited to specified transactions and not extended to ordinary course transactions such as bank deposits and the issuance of fixed or floating rate debt.

• *MSRB Response:* The MSRB disagrees in part with these comments and accordingly has determined not to make the changes to the Notice suggested by these comments, except as noted above. As noted above, the MSRB revised the Notice so that it would substitute the word ''suitability'' for the term ''appropriateness'' to align what SIFMA suggested might be potentially conflicting regulatory regimes. Further, the municipal advisor would not be deemed to have automatically satisfied the requirements of Rule G–17 by satisfying the requirements of another regulatory regime. The MSRB believes that adoption of SIFMA's comments with respect to ordinary course transactions would negate a significant purpose of the Notice.

• *Comment: Risk Disclosure; Duplication and Scope.* Catholic Finance suggested that where an underwriter had proposed a specific transaction and had adequately disclosed the risks, the municipal advisor need not also disclose the risks. Catholic Finance also requested clarification about whether the disclosure of risks and material incentives had to be in writing, as well as whether the same disclosures needed to be repeated to experienced clients in similar, successive transactions.

• *MSRB Response:* The MSRB has determined not to make the changes suggested by these comments. While a municipal advisor would not be required to disclose the same risks that an underwriter has disclosed, the municipal advisor would be required to determine the adequacy of such disclosure and advise its client as to whether the municipal advisor had reasonable grounds for believing the transaction or product recommended by the underwriter is suitable for such client. Such evaluation and advice are separate from whatever disclosure the underwriter presents. Further, while the disclosure of material risks would not be required to be in writing, the municipal advisor would be required to disclose any incentives and any other conflicts of interest in writing. Finally, with respect to disclosing the same risks to experienced clients in similar, successive transactions, the municipal advisor would be expected to consider whether disclosure would be advisable in light of new facts or circumstances concerning the client or the market, or the client's choice of new or different personnel directed to complete the transaction.

• *Comment: Determine Status of Client.* Capital Strategies requested that the MSRB clarify a municipal advisor's obligation if the status of its client could not be determined until after substantial advisory activity had taken place, citing an instance of a client initially considering a tax-exempt borrowing (and therefore being considered obligated person) but finally deciding to obtain a bank loan.

• *MSRB Response:* This comment is more appropriately addressed to the SEC, which has the authority to define the term ''obligated person'' as used in the Exchange Act.

• *Comment: Limit Obligations to Terms of Contract.* SIFMA and NAIPFA argued that a municipal advisor should be required to do only what the obligated person client contracted for, and SIFMA said that an advisor need not expressly disclaim an obligation absent an explicit agreement between the parties. SIFMA also said that Rule G–17 should not imply additional obligations when reviewing a product or transaction recommended to its client by another, specifically the obligation to review for appropriateness and to disclose material risks, outside of what has been specifically contracted for between the parties.

• *MSRB Response:* The MSRB has determined not to make any changes to the Notice as a result of this comment. The MSRB expects that municipal advisors that wish to limit their engagements with obligated persons would do so in writings (whether as part of engagement letters or separately) that limit the scope of their engagements to particularly enumerated services or which state that any services not specified in the writing would not be provided by the advisor. This should impose no measurable additional cost on the advisor or the obligated person.

• *Comment: Clarify Due Diligence Obligations.* NAIPFA suggested that various duties, such as a duty to investigate or to make reasonable inquiry, appear to be variations on due diligence requirements and requested that they be worded in the same manner in the draft Notice and a proposed interpretive notice under proposed Rule G–36 (on fiduciary duty of municipal advisors). NAIPFA asked that these be revised and clarified. SIFMA suggested that any duty to analyze appropriateness be limited to facts that the municipal advisor was required to obtain under MSRB rules, or otherwise had in its possession, and that no further due diligence be required.

• *MSRB Response:* The MSRB has determined not to make any changes to the Notice based on these comments. The Notice would not impose a ''due diligence'' obligation upon municipal advisors. However, to the extent that a municipal advisor makes a recommendation, the fulfillment of such advisor's suitability obligation as described above would necessitate that the advisor gather and review the information on which such suitability determination is based. The wording of the Notice differs from that of the Rule G–36 proposed notice because of the different duties owed by municipal advisors to their clients under the two notices.

Disclosure of Conflicts

• *Comment: Incorporate Requirements of Advisory Contracts in Rule G–23.* MRC suggested that the requirements to disclose conflicts and to obtain informed consent would be more appropriately addressed in MSRB Rule G–23, and that the requirements should be removed from the draft Notice.

• *MSRB Response:* The MSRB disagrees with these comments and has determined not to make any changes to the Notice based on these comments. Rule G–23 only concerns financial advisory activities of dealers with respect to issues of municipal securities. The Notice would be the appropriate place to address these disclosures by all municipal advisors with obligated person clients.

• *Comment: Disclose Linking Fees and Engagements.* Catholic Finance suggested that disclosure concerning forms of compensation include disclosures by dealer firms offering to link engagements and fees as a municipal advisor with a separate

engagement as underwriter on a separate transaction.

• *MSRB Response.* The MSRB has determined not to make any changes to the Notice based on these comments. The Notice would provide that other, associated conflicts of interest would be required to be disclosed and described, if applicable. This provision of the Notice would thus address many additional types of conflicts.

Forms of Compensation

• *Comment: Disclosure of Conflicts Confusing and Unnecessary.* Several commenters suggested that the MSRB delete Appendix A to the draft Notice (Disclosure of Conflicts with Various Forms of Compensation) and the requirement of the Notice that municipal advisors disclose the conflicts with various forms of compensation (B–Payne Group, MRC; NAIPFA; PFM). Commenters argued that the disclosure would be confusing and that the type of fee arrangement (specifically contingent fees) did not affect professional performance. MRC suggested that any disclosure requirements were more appropriately addressed in Rule G–23. NAIPFA suggested that disclosure of conflicts in forms of compensation be limited to the conflicts applicable to the form of compensation methodology at the time the compensation methodology was proposed. NAIPFA also suggested that ''pitches'' or other discussions of ideas with municipal entities prior to engagement should not require delivery of the disclosure. AGFS supported the proposal to require municipal advisors to clarify the advantages and disadvantages of various forms of compensation.

• *MSRB Response:* The MSRB has determined to revise the Notice so that it would address these comments. Because municipal advisors owe a duty of fair dealing with respect to their obligated person clients, the MSRB considers it essential that they disclose all material conflicts to their clients. The Notice has been revised so that it would provide that, if the obligated person client has required that a particular form of compensation be used, the disclosure provided by the municipal advisor would need only address that form of compensation. The revised Notice would also require that conflicts disclosures, including those regarding compensation, need only be delivered before the municipal advisor has been engaged to provide municipal advisory services, unless the conflicts are discovered or arise later.

The MSRB has determined not to eliminate Appendix A from the Notice. Appendix A was included in the Notice for the benefit of small municipal advisors to help them avoid the need to hire an attorney to prepare compensation conflicts disclosure associated with common forms of compensation. Use of Appendix A would not be mandatory and municipal advisors would be free to draft their own disclosure addressing these conflicts.

• *Comment: Disclose Fees of All Participants.* B–Payne Group said that fees of all participants (including bond attorneys) should be disclosed.

• *MSRB Response:* In the view of the MSRB, it is appropriate to interpret Rule G–17 differently for arm's-length counterparty relationships on the one hand (such as underwriters appropriately maintain with issuers) and advisory relationships on the other. The MSRB notes that it does not have jurisdiction over bond lawyers, unless they are functioning as municipal advisors, and, therefore, in most cases, may not require them to disclose compensation conflicts.

• *Comment: Due Diligence to Determine Authority of Municipal Official.* NAIPFA suggested that, in determining the authority of an official of an obligated person client to enter into a contract, to receive various disclosures, and to deliver informed consent, a municipal advisor should be permitted to rely on the apparent authority of such official to acknowledge the conflicts disclosure, assuming the advisor has no reason to believe that such person lacks the requisite authority.

• *MSRB Response:* The MSRB has determined to revise the Notice so that it would provide that a municipal advisor is required to deliver written disclosures of conflicts to, and receive informed consent from, those officials of the obligated person whom the municipal advisor reasonably believes have the authority to bind the obligated person client by contract with the municipal advisor.

• *Comment: Consent Presumed With Receipt of Written Agreement.* NAIPFA suggested that a municipal advisor be permitted to presume consent if it receives an executed contract (or similar document), or verbal agreement that a written engagement letter (or similar document) has been accepted, or written or verbal acknowledgement that the advisor has been selected following a request for proposal (''RFP'') process in which the form of compensation was appropriately disclosed and applicable disclosure provided.

• *MSRB Response:* The MSRB notes that the following provisions of the Notice would address this comment. The Notice would provide: ''For purposes of Rule G–17, an obligated person client will be deemed to have consented to conflicts that are clearly described in its engagement letter or other written contract with the municipal advisor, if the obligated person client expressly acknowledges the existence of such conflicts. If the official of the obligated person client agrees to proceed with the municipal advisory engagement after receipt of the conflicts disclosure but will not provide written acknowledgement of such conflicts, the municipal advisor may proceed with the engagement after documenting with specificity why it was unable to obtain such written acknowledgement.'' Accordingly, the MSRB has determined not to make any changes to the Notice to address this comment.

Misrepresentations

• *Comment: Disclose Only General Conflicts of Interest.* SIFMA said that it would be difficult for an advisor to accurately determine its capacity, resources, and knowledge when discussing a potential engagement with an obligated person client or on a forward-looking basis, and suggested that it be able to satisfy its obligation by providing generalized disclosures about its qualifications.

• *MSRB Response:* The Notice would specify, in the context of a response to an RFP, that the response must accurately describe the municipal advisor's knowledge and capabilities, and prohibits a municipal advisor from making false or misleading statements about its knowledge and capabilities, or omitting material facts about its knowledge and capabilities. The municipal advisor would be expected to base its response on its understanding about the scope of the engagement at that time. If the scope of the engagement changes, the municipal advisor would be prohibited from making false or misleading statements about its continued ability to perform the engagement. Accordingly, the MSRB has determined not to make any changes to the notice based on this comment.

Excessive Compensation

• *Comment: Definition of Excessive Compensation.* NAIPFA and B–Payne Group requested further clarification on the definition of ''excessive compensation.'' NAIPFA suggested certain criteria, including, among other things: (i) The time and labor required, the novelty and difficulty of the issue involved, and the skill requisite to perform the municipal advisory services

properly; (ii) the fee customarily charged in the locality for similar municipal advisory services; (iii) the amount involved and the results obtained; (iv) the nature and length of the professional relationship with the client; (v) the experience, reputation, and ability of the municipal advisor or municipal advisors performing the services; and (vi) whether the fee is fixed or contingent. B–Payne Group objected to any evaluation of whether its fees were excessive, arguing that no regulator was in a position to evaluate the reasonableness of the municipal advisor's fee.

• *MSRB Response:* The MSRB has determined to revise the Notice so that it would address these comments. The Notice would describe excessive compensation as compensation that is so disproportionate to the nature of the municipal advisory services performed as to indicate that the municipal advisor is engaging in an unfair practice in violation of Rule G–17. The MSRB would revise the Notice so that it would provide that ''The MSRB recognizes that what is considered reasonable compensation for a municipal advisor will vary according to the municipal advisor's expertise, the complexity of the financing, whether the fee is contingent upon the closing of the transaction, and the length of time spent on the engagement, among other factors.'' As this language recognizes, many factors can appropriately affect the amount of the fee, and the specific factors listed in the Notice would not be exclusive. Thus, it may be that the various other factors noted by commenters could have an impact on the compensation paid to a municipal advisor. In all cases, the municipal advisor should be able to support the legitimacy of its fees.

Solicitation of a Muncipal Entity

Disclosure of Material Facts; Gifts

• *Comment: Extent of Disclosure May Be of Questionable Value.* SIFMA suggested that the requirement to disclose all relationships with influential employees, board members, or affiliates of the municipal entity may be extensive and of questionable value. Further, SIFMA noted that a solicitor may not be in the best position to disclose all material risks and characteristics, and that such effort will be duplicative of the provider's (its client's) obligation once it has been retained an a municipal advisor.

• *MSRB Response:* The MSRB disagrees with this comment, especially given the relationship-driven business that enforcement actions have revealed. *See, e.g.,* endnote 15 to the Notice. Accordingly, the MSRB has determined not to make any changes to the Notice to address these comments.

• *Comment: Address Gifts in Rule G–20.* SIFMA suggested that the MSRB should address the issue of gifts in MSRB Rule G–20, as it has done for similar prohibitions on dealers.

• *MSRB Response:* The MSRB notes that the provisions in the Notice regarding Rule G–20 would only be reminders of existing MSRB guidance under Rule G–17, which is equally applicable to municipal advisors. Accordingly, the MSRB has determined not to make any changes to the Notice to address this comment.

• *Comment: Limit Duties of Affiliated Solicitors.* SIFMA said that the duties attendant on solicitors should not apply to solicitors affiliated with municipal advisors, and such solicitors should not be considered to be engaged in municipal advisory activities when soliciting on behalf of their municipal advisor affiliates.

• *MSRB Response:* The MSRB notes that affiliated solicitors are not included in the definition of ''municipal advisor'' under Section 15B(e)(4) of the Exchange Act and that Rule G–17 and the Notice would not apply to such solicitors. The Notice has been revised to refer to solicitations on behalf of ''unrelated'' third parties.

• *Comment: Clarify Referrals and Solicitations.* Catholic Finance requested clarification on whether referrals to it from prior clients constituted solicitation, and whether services performed as part of its exempt purpose and for its constituents at reduced or no compensation, or loans made to its constituents at subsidized rates, would constitute gifts under Rule G–17.

• *MSRB Response:* The MSRB has determined not to make any changes to the Notice based on this comment. The MSRB notes that the definition of ''solicitation of a municipal entity or obligated person'' found in Section 15B(e)(9) of the Exchange Act does not apply to solicitations for which compensation is neither directly nor indirectly received. Under amendments to MSRB Rule G–20 proposed by the MSRB, the rule would only restrict gifts made to natural persons.

Other Comments

• *Comment: Manner of Regulation and Cost of Compliance.* B–Payne Group expressed the view that the MSRB should regulate municipal advisors by getting ''experienced personnel on the ground in regional markets and charge them with staying on top of situations,'' rather than regulating municipal advisors as the MSRB regulates dealers. It argued for exemptions from MSRB rules for small municipal advisors and said the cost of compliance for such advisors would outweigh the regulatory benefit. Other parts of the comment letter addressed matters that were outside the scope of the request for comment on draft Rule G–17 (*e.g.,* professional qualifications testing, training for local finance officials) and are not summarized here.

• *MSRB Response:* For regulation of municipal advisors to be fair, all municipal advisors must know what rules apply to them. Rule G–17 requires municipal advisors to conduct their municipal advisory activities in a fair manner, and the proposed rule change would provide guidance to municipal advisors on what that duty of fair dealing means so they can tailor their conduct accordingly. Without such guidance, ''experienced personnel on the ground'' would likely enforce the Exchange Act in an inconsistent manner, which the MSRB doubts that B–Payne Group would consider fair.

The MSRB recognizes that there are costs of compliance with its rules. That is the reason the MSRB has included Appendix A to the Notice. By using Appendix A to provide disclosure concerning compensation conflicts, small municipal advisors will satisfy the compensation disclosure requirement of the Notice without having to retain legal counsel to assist them in the preparation of such disclosure.

• *Comment: Implementation Period.* SIFMA suggested that because Rule G–17 would subject municipal advisors to rules they are not currently subject to, the MSRB should consider providing for an implementation period of no less than one year.

• *MSRB Response.* The MSRB recognizes that some municipal advisors may be subject to rules that are not currently applicable. However, the appropriate implementation period will depend upon the provisions of the SEC's rule relating to municipal advisors.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Interested persons are also invited to submit views and arguments as to whether they can effectively comment on the proposed rule change prior to the date of final adoption of the Commission's permanent rules for the registration of municipal advisors. 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–MSRB–2011–15 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–MSRB–2011–15. 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 MSRB's offices. 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–MSRB–2011–15 and should be submitted on or before October 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23383 Filed 9–13–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65295; File No. SR–ISE–2011–55]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a New Market Data Feed

September 8, 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 August 31, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new market data offering called the ISE Real-time Implied Volatilities and Greeks Feed. The proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to adopt a new market data offering called the ISE Real-time Implied Volatilities and Greeks Feed (the ''ISE Feed''). The ISE Feed delivers real-time implied volatilities and risk parameters (also referred to as ''Greeks'') for American style equity, index and ETF options. This information is used to track an option's price relative to changes in volatility and the underlying security's price, which affects the theoretical price of an option. The risk parameters are useful for delta neutral option execution and monitoring an option's time premium decay. The ISE Feed is also useful for investing and hedging strategies such as placing orders based on changes in levels of volatility.

The ISE Feed includes real-time implied volatilities for the bid, ask and mid-point price as well as delta, gamma, vega, theta and rho for each option series. The ISE Feed is a low latency feed that produces data for the entire universe of U.S. options disseminated by the Options Price Reporting Authority (OPRA). The Exchange believes the ISE Feed provides valuable information that can help users make informed investment decisions. The Exchange will make the ISE Feed available to both members and non-members on a subscription basis later this year and will submit a separate proposal to establish fees for this market data offering.

2. Basis

ISE believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[3] in general and with Section 6(b)(5) of the Act,[4] 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 regulating, clearing, settling, processing information with

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. ISE believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of more useful proprietary data and also by clarifying its availability to market participants.

Additionally, ISE is making a voluntary decision to make this data available. ISE is not required by the Act in the first instance to make the data available, unlike the best bid and offer which must be made available under the Act. ISE chooses to make the data available as proposed in order to improve market quality, to attract order flow, and to increase transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE 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. The Exchange believes that the ISE Feed will help attract new users and new order flow to the Exchange, thereby improving the Exchange's ability to compete in the market for options order flow and executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] Because the foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder.[9]

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 No. SR–ISE–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–ISE–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 Commissions 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–55 and should be submitted by October 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23440 Filed 9–13–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] The Commission notes that Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65299; File No. SR–BYX–2011–021]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend and Restate the Second Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc.

September 8, 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 August 29, 2011, BATS Y–Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Second Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc. (the ''Corporation'') in connection with the anticipated initial public offering of shares of its Class A common stock.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 13, 2011, the Corporation, the sole stockholder of the Exchange, filed a registration statement on Form S–1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the ''IPO''). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation and adopt a Third Amended and Restated Certificate of Incorporation (the ''New Certificate of Incorporation''). The amendments include, among other things, (i) Increasing the total number of authorized shares of stock of the Corporation, (ii) reclassifying the existing common stock of the Corporation into two classes of shares, Class A and Class B, (iii) setting forth the respective voting rights and of Class A and Class B common stock, (iv) setting forth certain limitations on transfer, (v) defining the newly reclassified shares of Class A common stock and Class B common stock as a single class of capital stock of the Corporation for purposes of Article 5 of the New Certificate of Incorporation, entitled ''Limitations on Ownership, Transfer & Voting'', and (vi) certain requirements for future amendments to the certificate of incorporation and bylaws.

The purpose of this rule filing is to permit the Corporation, the sole stockholder of the Exchange, to adopt the New Certificate of Incorporation. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and by-laws. The stock in, and voting power of, the Exchange will continue to be directly and solely held solely [sic] by the Corporation. The governance of the Exchange will continue under its existing structure, which provides for a ten member board of directors reflecting diverse representation of industry, non-industry and exchange members, currently including (i) The chief executive officer of the Exchange, (ii) two industry directors, (iii) two Exchange member directors, and (iv) five non-industry directors.

Background

The Corporation was originally formed as BATS Holdings, Inc. on June 29, 2007 and subsequently changed its name to BATS Global Markets, Inc. On May 4, 2011, the Corporation amended and restated its certificate of incorporation (the ''Current Certificate of Incorporation'') to (i) Increase the number of authorized shares of common stock, and (ii) designate certain shares as either ''Voting Common Stock'' or ''Non-Voting Common Stock.'' Pursuant to the Current Certificate of Incorporation, shares of Non-Voting Common Stock possess the same rights, preferences, powers, privileges, restrictions, qualifications and limitations as the Voting Common Stock, except that Non-Voting Common Stock is generally non-voting. Non-Voting Common Stock is convertible into Voting Common Stock on a one-to-one basis, either (i) Automatically upon transfer from the holder thereof to an unrelated person, or (ii) at any time and from time to time at the option of the holder. The Non-Voting Common Stock was created in anticipation of future issuances to stockholders who may wish to increase their economic ownership, but avoid accruing voting power, in the Corporation.

Authorized Shares and Reclassification

The New Certificate of Incorporation will revise the capital structure of the Corporation to increase the number of authorized shares and create two separate classes of shares, Class A and Class B. In particular, changes proposed to Section 4.01 of the New Certificate of Incorporation would increase the number of shares authorized for issuance to an amount that accommodates the reclassification discussed below, and provides additional shares for future issuances. Pursuant to Section 4.02 of the New Certificate of Incorporation, the Corporation is proposing to designate Class A common stock as either ''Class A Common Stock'' or ''Non-Voting Class A Common Stock,'' and Class B common stock will be further designated as either ''Class B Common Stock'' or ''Non-Voting Class B Common Stock.''

Further pursuant to Section 4.02, on the date that the New Certificate of Incorporation becomes effective (the ''Effective Time''),[3] the Corporation is proposing that each authorized, issued and outstanding share of Voting Common Stock will be automatically reclassified into (i) Seven shares of Class A Common Stock and (ii) three shares of Class B Common Stock, and each authorized, issued and outstanding share of Non-Voting Common Stock will be automatically reclassified into (i) Seven shares of Non-Voting Class A Common Stock and (ii) three shares of Non-Voting Class B Common Stock. Except for voting rights and certain conversion features, as described below, Class A Common Stock, Non-Voting Class A Common Stock, Class B Common Stock, and Non-Voting Class B Common Stock will generally have identical rights, privileges and will rank equally.

Pursuant to changes proposed to Section 4.04(a) of the New Certificate of Incorporation, all voting power will be vested in the Class A Common Stock and the Class B Common Stock (except with regard to certain matters involving only preferred shares as noted in proposed changes to Section 4.03 of the New Certificate of Incorporation), which will vote together as one class on all matters submitted to a vote or for the consent of the Corporation's stockholders, except that holders of Class A Common Stock will be entitled to one vote per Class A share, while holders of Class B Common Stock will be entitled to two and one-half votes per Class B share. Shares of Non-Voting Class A Common Stock and Shares of Non-Voting Class B Common Stock are non-voting, except with regard to certain matters that would adversely affect their respective rights as described in the proposed changes to Section 4.02(a)(ii) of the New Certificate

[3] It is anticipated that the Effective Time will coincide with the date of the closing of the IPO and will occur immediately prior thereto.

of Incorporation. Only Class A Common Stock is proposed to be sold in the IPO; Class B Common Stock and Class B Non-Voting Common Stock will not be sold in the IPO and will continue to be held by existing investors.

Pursuant to changes proposed to Section 4.04(b) of the New Certificate of Incorporation, shares of common stock not sold in the IPO will be subject to restrictions on transfer following the Effective Time. In particular, under Section 4.04(b)(i), except for certain permitted transfers as defined in Section 4.04(b)(iii), a holder of shares of Class A Common Stock or Non-Voting Class A Common Stock (including shares subject to an option, warrant or similar right) on the Effective Time may not transfer any of such shares until 180 days following the Effective Time, and then may only transfer up to fifty percent of their total holdings of common stock, but only in the form of Class A Common Stock or Non-Voting Class A Common Stock, until one year following the Effective Time less any shares that were sold in the IPO. In addition, pursuant to Section 4.04(b)(ii), subject to similar permitted transfers as defined in Section 4.04(b)(iii), a holder of Class B Common Stock or Non-Voting Class B Common Stock on the Effective Time may not transfer any of such shares until three years from the Effective Time.

Pursuant to Section 4.04(c), the New Certificate of Incorporation will generally replicate the existing conversion features of Non-Voting Common Stock (described above) and apply these features to Non-Voting Class A Common Stock. As such, Non-Voting Class A Common Stock will be convertible into Class A Common Stock, on a one-to-one basis, either (i) Automatically upon transfer from the holder thereof to an unrelated person, or (ii) at any time and from time to time at the option of the holder. Non-Voting Class B Common Stock will be convertible into Class B Common Stock, on a one-to-one basis, at any time and from time to time at the option of the holder. Subject to certain exceptions (such as transfers among affiliates, or between existing holders), shares of Class B Common Stock and Non-Voting Class B Common Stock will automatically convert into Class A Common Stock, on a one-to-one basis, upon any transfer of such shares. Class A Common Stock will not be convertible into any other class of stock.

Finally, pursuant to changes proposed to Section 4.02(b) and Section 4.04(c)(v)(B) of the New Certificate of Incorporation, upon reclassification and anytime thereafter, a stockholder that, together with its affiliates, owns less than 4,960,491 shares of outstanding common stock (the ''Class B Threshold''), will have its Class B Common Stock automatically convert into Class A Common Stock and its Non-Voting Class B Common Stock automatically convert into Non-Voting Class A Common Stock.

The purpose for the reclassification of the Corporation's common stock into Class A common stock and Class B common stock is to encourage the Corporation's existing strategic investors to remain strategic investors of the Corporation after the IPO. The proposed changes discussed above achieve this goal in several ways. First, the reclassification of each share of the Corporation's existing common stock into seven shares of Class A Common Stock with one vote each, and three shares of Class B Common Stock with two and one-half votes each, in conjunction with the application of the Class B Threshold and other factors, ensures that in the aggregate the Class B common stock controls a meaningful, but less than majority, percentage of the vote on matters coming before the stockholders, while simultaneously retaining a significant economic investment (within approximately twenty percentage points of the voting control represented by the Class B common stock) in the Corporation. By allowing the transfer restrictions on the Class A common stock to expire in two tranches at 180 days and one year, while retaining transfer restrictions on the Class B common stock for three years, the proposal balances the ability of existing strategic investors to orderly sell shares in the open market, while at the same time retaining the strategic benefit to the Corporation of their significant ownership for at least three years through their holdings of Class B common stock.

Further, the requirement that the Class B common stock of any holder of less than the Class B Threshold automatically converts to Class A common stock ensures that only investors with a significant economic investment (approximately two percent) in the Corporation own Class B common stock. As such, existing investors that do not have an economic stake in the Corporation above the Class B Threshold will not own Class B common stock after the proposed reclassification, and existing investors who will own Class B common stock after the proposed reclassification will cease to own Class B common stock once their economic stake in the Corporation falls below the Class B Threshold, further ensuring an appropriate balance between an investor's voting control and economic stake in the Corporation.

Limitations on Ownership and Voting Power

Section 5.01(b)(i) of the New Certificate of Incorporation defines the Class A Common Stock, the Non-Voting Class A Common Stock, the Class B Common Stock, the Non-Voting Class B Common Stock and any series of Preferred Stock of the Corporation as a single class of capital stock of the Corporation for purposes of Section 5.01(a)(i) and Section 5.01(a)(ii) of the New Certificate of Incorporation. As such, for purposes of determining compliance with the ownership limitations set forth in Section 5.01(a)(i) and Section 5.01(a)(ii) of the New Certificate of Incorporation, the Class A and Class B shares, including both voting and non-voting shares, and, if applicable, any Preferred Shares, will be aggregated. As proposed, the New Certificate of Incorporation will not include a provision present in the Current Certificate of Incorporation that excludes non-voting stock from the ownership and voting limitations applicable to non-Member shareholders.[4] Retaining this provision would have caused an internal inconsistency with respect to aggregation of stock, and the Exchange does not believe that excluding non-voting stock from such limitations is necessary or consistent with the intent of the limitations. The New Certificate of Incorporation will thus maintain and enhance the limitations on aggregate ownership and total voting power that currently exist under the Current Certificate of Incorporation. References to an Investor Rights Agreement are also removed, as the relevant provisions of that agreement are expected to terminate upon the IPO.

Bylaws and Future Amendments to the Certificate of Incorporation

Article 9 and Article 15 of the New Certificate of Incorporation relate to the adoption of, and amendments to, the Corporation's bylaws, and future amendments to the Corporation's certificate of incorporation, respectively. Pursuant to Section 9.01, the New Certificate of Incorporation preserves the existing right of the Corporation's Board of Directors to adopt, amend or repeal the Corporation's bylaws. Pursuant to proposed Section 9.02(a) of

[4] The Exchange notes that there is no currently issued and outstanding non-voting stock of the Corporation, nor has the Corporation previously issued non-voting stock.

the New Certificate of Incorporation, prior to a Change in Ownership, which is defined in Section 6.01(b) of the New Certificate of Incorporation as ''a transaction or series of transactions which results in the beneficial owners of the Class B [common stock] owning in the aggregate less than a majority of the total voting power of [the Corporation's outstanding securities] * * *'', the stockholders may adopt, amend or repeal the bylaws upon the affirmative vote of the majority of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class. Pursuant to proposed Section 9.02(b), upon a Change in Ownership, the stockholders may adopt, amend, or repeal the bylaws upon the affirmative vote of not less than seventy percent of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class.

Similarly, pursuant to proposed Section 15.01 of the New Certificate of Incorporation, prior to any Change in Ownership, and subject to Section 15.03, which requires any proposed amendment to be reviewed by the Board of Directors of the Exchange and filed with the Commission if required under Section 19 of the Act, the certificate of incorporation can be amended in any manner permitted by the General Corporation Law of the State of Delaware, as amended (''Delaware Law''), which today generally allows for the amendment of a certificate of incorporation by the affirmative vote of the majority of the outstanding stock entitled to vote thereon. Pursuant to proposed Section 15.02 of the New Certificate of Incorporation, upon a Change in Ownership, and again subject to Section 15.03, certain provisions of the certificate of incorporation can only be amended upon the affirmative vote of not less than seventy percent of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class. These provisions include Sections 4.04(b) and 4.04(c), relating to transfer restrictions and conversion rights, and Article 5 through Article 15, relating to limitations on ownership, transfer, and voting, defined terms, board of directors, duration of the Corporation, bylaws, indemnification, meetings and actions of stockholders, forum selection, compromise or other arrangement, Section 203 opt-out, and amendments, respectively.

The purpose for the distinction in the stockholders' ability to adopt, amend, or repeal the bylaws, or amend the certificate of incorporation, prior to versus upon a Change in Ownership is to maintain the existing ability of the Corporation's strategic investors to take such actions so long as they continue to control, through their aggregate ownership of Class A Common Stock and Class B Common Stock, a majority of the voting power of the Corporation's outstanding securities, and to adopt common public company supermajority requirements upon a Change in Ownership to deter actions being taken that the Corporation believes may be detrimental to the Corporation, including any actions which could detrimentally effect the Corporation's ability to comply with its unique responsibilities under the Act as the sole owner of two registered national securities exchanges in the United States. The purpose for limiting the application of the supermajority voting requirements to certain specified provisions of the certificate of incorporation is to focus such requirements on the most critical provisions of the certificate of incorporation.

Other Amendments

The New Certificate of Incorporation will amend and restate various other provisions of the Current Certificate of Incorporation in a manner that the Exchange believes are intended to reflect provisions that are more customary for publicly-owned companies (such as those relating to the indemnification of directors and business combinations, among others).

In particular, pursuant to changes proposed to Section 4.01 of the New Certificate of Incorporation, the Corporation will have the authority to issue 40 million shares of Preferred Stock, par value $0.01 per share (the ''Preferred Stock''), which the Corporation's Board of Directors may, by resolution from time to time, issue in one or more classes or series by filing a certificate pursuant to Delaware Law fixing the terms and conditions of such class or series of Preferred Stock. The Preferred Stock may be used by the Corporation to raise capital or to act as a safety mechanism for unwanted takeovers.

Pursuant to Section 4.04(c)(vii) of the New Certificate of Incorporation, the Corporation will be required to reserve and keep available out of its authorized but unissued capital stock shares of Class A common stock and Class B common stock solely for the purpose of effecting the conversion of such shares of capital stock. In addition, pursuant to Section 4.04(c)(viii), the Corporation may establish certain policies and procedures relating to the conversion of capital stock and the general administration of the Corporation's multi-class common stock structure.

Also, Article 6 of the New Certificate of Incorporation includes certain defined terms that are used in the New Certificate of Incorporation, such as ''Change in Ownership'', ''Change of Control'', and ''Related Persons'', among others.

Pursuant to Section 7.04 of the New Certificate of Incorporation, cumulative voting in the election of directors will be prohibited. If the Corporation were to permit cumulative voting, stockholders would be entitled to as many votes as are equal to the number of votes which such stockholder would be entitled to cast for the election of directors with respect to such stockholder's shares of stock, multiplied by the number of directors to be elected by such holder, and such stockholder may cast all of such votes for a single director or may distribute them among the number to be voted for, as such stockholder may see fit. In contrast, in ''regular'' or ''statutory'' voting (*i.e.,* when cumulative voting is prohibited), stockholders may not give more than one vote per share to any single director nominee.

Pursuant to the changes proposed to Section 11.03 of the New Certificate of Incorporation, prior to a Change in Ownership, any action may be taken by the stockholders without a meeting, by written consent to the extent permitted under Delaware Law. Following a Change in Control, any action required or permitted to be taken at any meeting of the stockholders may be taken only upon the vote of stockholders at a meeting of the stockholders in accordance with Delaware Law and the New Certificate of Incorporation, and may not be taken by written consent without a meeting, except under certain circumstances.

Pursuant to Article 14 of the New Certificate of Incorporation, prior to any Change in Ownership, the Corporation will not be governed by Section 203 of Delaware Law; however, following a Change in Ownership, the Corporation will be governed by Section 203 of Delaware Law. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a business combination with anyone who owns at least fifteen percent of its common stock. This prohibition lasts for a period of three years after that person has acquired the fifteen percent ownership. The corporation may, however, engage

in a business combination if it is approved by its board of directors before the person acquires the fifteen percent ownership or later by its board of directors and two-thirds of the stockholders of the public corporation. The restrictions contained in Section 203 do not apply if, among other things, the corporation's certificate of incorporation contains a provision expressly electing not to be governed by Section 203.

The New Certificate of Incorporation also makes various non-substantive, stylistic changes throughout.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposal is consistent with Section 6(b)(1) of the Act, because it retains and enhances existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is reclassifying its existing voting common stock into shares of Class A Common Stock and shares of Class B Common Stock, and is authorizing the potential future issuance of Preferred Stock. Class A Common Stock and Class B Common Stock have identical economic rights, and the only distinction between the Class A Common Stock and the Class B Common Stock, other than the transfer restrictions and conversion provisions applicable to such shares, is the number of votes attributable to each share. The consideration of Class A Common Stock, Non-Voting Class A Common Stock, Class B Common Stock, Non-Voting Class B Common Stock and any series of Preferred Stock as a single class of capital stock of the Corporation under the proposal for purposes of Section 5.01(a)(i) and Section 5.01(a)(ii) is consistent with and enhances the limitations on ownership in place under the Current Certificate of Incorporation. In other words, aggregation of all the capital stock of the Corporation for purposes of the ownership and voting limitations is consistent with the policy concerns sought to be addressed by these provisions of the Current Certificate of Incorporation and the proposed New Certificate of Incorporation. Specifically, these ownership and voting limitations ensure that no single Exchange Member or other person can exercise undue influence over the Exchange through ownership of a combination of different classes of stock issued by the Corporation.

Moreover, the voting limitations contained in Section 5.01(a)(iii) of the New Certificate of Incorporation are unaffected by the reclassification of the Corporation's common stock into Class A Common Stock and Class B Common Stock or the potential issuance of Preferred Stock in the future. To determine any stockholder's compliance with such voting limitations all Class A Common Stock, Non-Voting Class A Common Stock, Class B Common Stock, Non-Voting Class B Common Stock and Preferred Stock, would be aggregated under the Current Certificate of Incorporation as well as the proposed New Certificate of Incorporation.

(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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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–BYX–2011–021 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 No. SR–BYX–2011–021. 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 changes 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 will also 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 No. SR–BYX–2011–021 and should be submitted on or before October 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23480 Filed 9–13–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65280; File No. SR–CBOE–2011–083]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PULSe Fees

September 7, 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 August 31, 2011, the Chicago Board Options Exchange, Incorporated (''CBOE'' or 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 CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] 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 is proposing to amend its Fees Schedule as it relates to the PULSe workstation. The text of the proposed rule change is available on the Exchange's Web site *http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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, Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to revise the PULSe Away-Market Routing and Routing Intermediary fees. The Exchange is also proposing to expand on its past description of the away-market routing functionality available for stock orders. In addition, the Exchange is proposing to eliminate the PULSe non-standard services fee. Finally, the Exchange is proposing to make a non-substantive numbering correction to its Fees Schedule. All of these changes, which are described in more detail below, will be effective September 1, 2011.

By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of CBOE and CBOE Stock Exchange, LLC (''CBSX''). In addition, the PULSe workstation provides a user with the capability to send options orders to other U.S. options exchanges and stock orders to other U.S. stock exchanges (''away-market routing'').[5] To use the away-market routing functionality, a CBOE or CBSX Trading Permit Holder (''TPH'') must either be a PULSe Routing Intermediary or establish a relationship with a third party PULSe Routing Intermediary. A ''PULSe Routing Intermediary'' is a CBOE or CBSX TPH that has connectivity to, and is a member of, other options and/or stock exchanges. If a TPH sends an order from the PULSe workstation, the PULSe Routing Intermediary will route that order to the designated market on behalf of the entering TPH.

The first purpose of this proposed rule change is to reduce the PULSe Away-Market Routing fee. Currently the fee is set at $0.05 per executed contract or share equivalent. The Exchange is proposing to reduce the fee to $0.02 per contract or share equivalent.

The second purpose of this proposed rule change is to modify the PULSe Routing Intermediary fee. Currently, the Fees Schedule provides that each PULSe Routing Intermediary is charged a fee of $20 per PULSe workstation per month for each PULSe workstation that is enabled to send orders through the Routing Intermediary. However, the fee is only assessed for those workstations in which the Routing Intermediary is acting as a third-party routing intermediary for another TPH (*i.e.,* the fee is not assessed on those workstations where the Routing Intermediary is acting as a routing intermediary on its own behalf). This fee has been waived through September 30, 2011. The Exchange is proposing to amend the fee to instead provide that a Routing Intermediary will be charged a fee for utilizing the PULSe away-market routing technology of $0.02 per executed contract or share equivalent for the first 1 million contracts or share equivalent executed in a given month and $0.03 per contract or share equivalent for each additional contract or share equivalent executed in the same month. The Exchange intends to assess this fee to Routing Intermediaries whether the Routing Intermediary is routing orders on behalf of itself as a TPH or as a third party Routing Intermediary for other TPHs. The Exchange notes that the Routing Intermediary fee will not be applicable for routes to C2 Options Exchange, Incorporated (''C2'') to the extent that the CBOE/CBSX TPH submitting the order to C2 is also a C2 TPH.[6]

The revised PULSe Routing Intermediary fee will allow for the recoupment of the costs of developing, maintaining, and supporting the PULSe workstation and related Routing Intermediary functionality and for income from the value-added services being provided through use of the PULSe workstation and related away-market routing technology. The Exchange believes the fee structure represents an equitable allocation of reasonable fees in that the same fees are applicable to all Routing Intermediaries

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] For a more detailed description of the PULSe workstation and its other functionalities, *see, e.g.,* Securities Exchange Act Release Nos. 62286 (June 11, 2010), 75 FR 34799 (June 18, 2010) (SR–CBOE–2010–051) and 63721 (January 14, 2011), 76 FR 3929 (January 21, 2011) (SR–CBOE–2011–001).

[6] The PULSe workstation offers the ability to route orders to any market, including CBOE/CBSX affiliate C2. To the extent a CBOE/CBSX TPH that is also a C2 TPH obtains a PULSe workstation through CBOE, it is not necessary for that TPH to obtain a separate PULSe workstation through C2 to route orders to C2. *See* Securities Exchange Act Release No. 63244 (November 4, 2010), 75 FR 69148 (November 10, 2010) (SR–CBOE–2010–100). It is also not necessary for that TPH to utilize the services of a Routing Intermediary to route orders to C2. As such, to the extent a CBOE/CBSX TPH is also a C2 TPH, a Routing Intermediary fee would not be applicable because the fee is only applicable for away-market routing through a Routing Intermediary. The TPH would not be routing away through a Routing Intermediary, but instead would be submitting orders directly to CBOE as a CBOE TPH, CBSX as a CBSX TPH or C2 as a C2 TPH, as applicable, where the TPH's activity would be subject to the transaction fee schedule of CBOE, CBSX or C2, respectively. To the extent a CBOE/CBSX TPH is not a C2 TPH and utilizes the services of a third party Routing Intermediary to route orders to C2, the Routing Intermediary would be subject to the fee for the CBOE/CBSX TPH's executions on C2.

that provide away-market routing for TPHs via the PULSe workstation. In addition, the Exchange believes that the $0.02/$0.03 Routing Intermediary fee is reasonable and appropriate in light of the fact that it is small in relation to the total costs typically incurred in routing and executing orders. The Exchange also notes that use of the PULSe workstation, and the Routing Intermediary functionality and the away-market routing technology available through the PULSe workstation, are not compulsory. In addition, the decision to function as a Routing Intermediary for PULSe purposes is discretionary, and a TPH can choose to route orders for itself or others without using the PULSe workstation. The services are offered as a convenience and are not the exclusive means available to send or route orders to CBOE or CBSX or intermarket.

The third purpose of this proposed rule change is to expand on our prior description of the away-market routing functionality available for stock orders. In particular, as noted above, the Exchange has previously indicated that the PULSe workstation provides a user with the capability to send stock orders to other U.S. stock exchanges through a PULSe Routing Intermediary.[7] The Exchange also notes that it may determine that the PULSe workstation would provide a user with the capability to send stock orders to other trading centers,[8] not just U.S. stock exchanges, through a Routing Intermediary.

The fourth purpose of this proposed rule change is to eliminate the fee for non-standard services, which is currently $350 per hour plus costs. Non-standard services may include time and materials for non-standard installations or modifications to PULSe to accommodate a TPH's use of PULSe with other technologies. The Exchange is proposing to eliminate the fee at this time because, given that PULSe workstation is a relatively new technology that is being fine-tuned and enhanced based on our experience with and feedback from TPHs, we find it difficult to assess which services should be considered ''non-standard'' at this point in time. (The fee was first implemented in November 2010.[9] To date, the Exchange has not identified an instance where the fee was applicable to any service considered to be non-standard and has not collected any fees under this provision.) The Exchange may determine to reintroduce a non-standard services fee in the future through another rule change filing once we gain more experience with the PULSe workstation.

Finally, the fifth purpose of this proposed rule change is to make a non-substantive numbering correction to the Fees Schedule. In particular, the Exchange is proposing to renumber Section 8(F)(10)(d) through (f) to (c) through (e) in order to correct a numbering error (there is currently no paragraph number with (c)).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among TPHs in that the same fees and fee waivers are applicable to all TPHs and Routing Intermediaries that utilize the PULSe workstation, Routing Intermediary functionality and the away-market routing services.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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 recieved with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 [13] thereunder.

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–CBOE–2011–083 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–CBOE–2011–083. 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 CBOE. 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–CBOE–2011–083 and

[7] *See* note 5, *supra,* and surrounding discussion.

[8] A ''trading center,'' as provided under Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.

[9] *See* SR–CBOE–2010–100, note 6, *supra.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

should be submitted on or before October 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23376 Filed 9–13–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65298; File No. SR–BATS–2011–033]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend and Restate the Second Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc.

September 8, 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 August 29, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend the Second Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc. (the ''Corporation'') in connection with the anticipated initial public offering of shares of its Class A common stock.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 13, 2011, the Corporation, the sole stockholder of the Exchange, filed a registration statement on Form S–1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the ''IPO''). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation and adopt a Third Amended and Restated Certificate of Incorporation (the ''New Certificate of Incorporation''). The amendments include, among other things, (i) Increasing the total number of authorized shares of stock of the Corporation, (ii) reclassifying the existing common stock of the Corporation into two classes of shares, Class A and Class B, (iii) setting forth the respective voting rights and of Class A and Class B common stock, (iv) setting forth certain limitations on transfer, (v) defining the newly reclassified shares of Class A common stock and Class B common stock as a single class of capital stock of the Corporation for purposes of Article 5 of the New Certificate of Incorporation, entitled ''Limitations on Ownership, Transfer & Voting'', and (vi) certain requirements for future amendments to the certificate of incorporation and bylaws.

The purpose of this rule filing is to permit the Corporation, the sole stockholder of the Exchange, to adopt the New Certificate of Incorporation. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and by-laws. The stock in, and voting power of, the Exchange will continue to be directly and solely held solely [sic] by the Corporation. The governance of the Exchange will continue under its existing structure, which provides for a ten member board of directors reflecting diverse representation of industry, non-industry and exchange members, currently including (i) The chief executive officer of the Exchange, (ii) two industry directors, (iii) two Exchange member directors, and (iv) five non-industry directors.

Background

The Corporation was originally formed as BATS Holdings, Inc. on June 29, 2007 and subsequently changed its name to BATS Global Markets, Inc. On May 4, 2011, the Corporation amended and restated its certificate of incorporation (the ''Current Certificate of Incorporation'') to (i) Increase the number of authorized shares of common stock, and (ii) designate certain shares as either ''Voting Common Stock'' or ''Non-Voting Common Stock.'' Pursuant to the Current Certificate of Incorporation, shares of Non-Voting Common Stock possess the same rights, preferences, powers, privileges, restrictions, qualifications and limitations as the Voting Common Stock, except that Non-Voting Common Stock is generally non-voting. Non-Voting Common Stock is convertible into Voting Common Stock on a one-to-one basis, either (i) Automatically upon transfer from the holder thereof to an unrelated person, or (ii) at any time and from time to time at the option of the holder. The Non-Voting Common Stock was created in anticipation of future issuances to stockholders who may wish to increase their economic ownership, but avoid accruing voting power, in the Corporation.

Authorized Shares and Reclassification

The New Certificate of Incorporation will revise the capital structure of the Corporation to increase the number of authorized shares and create two separate classes of shares, Class A and Class B. In particular, changes proposed to Section 4.01 of the New Certificate of Incorporation would increase the number of shares authorized for issuance to an amount that accommodates the reclassification discussed below, and provides additional shares for future issuances. Pursuant to Section 4.02 of the New Certificate of Incorporation, the Corporation is proposing to designate Class A common stock as either ''Class A Common Stock'' or ''Non-Voting Class A Common Stock,'' and Class B common stock will be further designated as either ''Class B Common Stock'' or ''Non-Voting Class B Common Stock.''

Further pursuant to Section 4.02, on the date that the New Certificate of Incorporation becomes effective (the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Effective Time''),[3] the Corporation is proposing that each authorized, issued and outstanding share of Voting Common Stock will be automatically reclassified into (i) Seven shares of Class A Common Stock and (ii) three shares of Class B Common Stock, and each authorized, issued and outstanding share of Non-Voting Common Stock will be automatically reclassified into (i) Seven shares of Non-Voting Class A Common Stock and (ii) three shares of Non-Voting Class B Common Stock. Except for voting rights and certain conversion features, as described below, Class A Common Stock, Non-Voting Class A Common Stock, Class B Common Stock, and Non-Voting Class B Common Stock will generally have identical rights, privileges and will rank equally.

Pursuant to changes proposed to Section 4.04(a) of the New Certificate of Incorporation, all voting power will be vested in the Class A Common Stock and the Class B Common Stock (except with regard to certain matters involving only preferred shares as noted in proposed changes to Section 4.03 of the New Certificate of Incorporation), which will vote together as one class on all matters submitted to a vote or for the consent of the Corporation's stockholders, except that holders of Class A Common Stock will be entitled to one vote per Class A share, while holders of Class B Common Stock will be entitled to two and one-half votes per Class B share. Shares of Non-Voting Class A Common Stock and Shares of Non-Voting Class B Common Stock are non-voting, except with regard to certain matters that would adversely affect their respective rights as described in the proposed changes to Section 4.02(a)(ii) of the New Certificate of Incorporation. Only Class A Common Stock is proposed to be sold in the IPO; Class B Common Stock and Class B Non-Voting Common Stock will not be sold in the IPO and will continue to be held by existing investors.

Pursuant to changes proposed to Section 4.04(b) of the New Certificate of Incorporation, shares of common stock not sold in the IPO will be subject to restrictions on transfer following the Effective Time. In particular, under Section 4.04(b)(i), except for certain permitted transfers as defined in Section 4.04(b)(iii), a holder of shares of Class A Common Stock or Non-Voting Class A Common Stock (including shares subject to an option, warrant or similar right) on the Effective Time may not transfer any of such shares until 180 days following the Effective Time, and then may only transfer up to fifty percent of their total holdings of common stock, but only in the form of Class A Common Stock or Non-Voting Class A Common Stock, until one year following the Effective Time less any shares that were sold in the IPO. In addition, pursuant to Section 4.04(b)(ii), subject to similar permitted transfers as defined in Section 4.04(b)(iii), a holder of Class B Common Stock or Non-Voting Class B Common Stock on the Effective Time may not transfer any of such shares until three years from the Effective Time.

Pursuant to Section 4.04(c), the New Certificate of Incorporation will generally replicate the existing conversion features of Non-Voting Common Stock (described above) and apply these features to Non-Voting Class A Common Stock. As such, Non-Voting Class A Common Stock will be convertible into Class A Common Stock, on a one-to-one basis, either (i) Automatically upon transfer from the holder thereof to an unrelated person, or (ii) at any time and from time to time at the option of the holder. Non-Voting Class B Common Stock will be convertible into Class B Common Stock, on a one-to-one basis, at any time and from time to time at the option of the holder. Subject to certain exceptions (such as transfers among affiliates, or between existing holders), shares of Class B Common Stock and Non-Voting Class B Common Stock will automatically convert into Class A Common Stock, on a one-to-one basis, upon any transfer of such shares. Class A Common Stock will not be convertible into any other class of stock.

Finally, pursuant to changes proposed to Section 4.02(b) and Section 4.04(c)(v)(B) of the New Certificate of Incorporation, upon reclassification and anytime thereafter, a stockholder that, together with its affiliates, owns less than 4,960,491 shares of outstanding common stock (the ''Class B Threshold''), will have its Class B Common Stock automatically convert into Class A Common Stock and its Non-Voting Class B Common Stock automatically convert into Non-Voting Class A Common Stock.

The purpose for the reclassification of the Corporation's common stock into Class A common stock and Class B common stock is to encourage the Corporation's existing strategic investors to remain strategic investors of the Corporation after the IPO. The proposed changes discussed above achieve this goal in several ways. First, the reclassification of each share of the Corporation's existing common stock into seven shares of Class A Common Stock with one vote each, and three shares of Class B Common Stock with two and one-half votes each, in conjunction with the application of the Class B Threshold and other factors, ensures that in the aggregate the Class B common stock controls a meaningful, but less than majority, percentage of the vote on matters coming before the stockholders, while simultaneously retaining a significant economic investment (within approximately twenty percentage points of the voting control represented by the Class B common stock) in the Corporation. By allowing the transfer restrictions on the Class A common stock to expire in two tranches at 180 days and one year, while retaining transfer restrictions on the Class B common stock for three years, the proposal balances the ability of existing strategic investors to orderly sell shares in the open market, while at the same time retaining the strategic benefit to the Corporation of their significant ownership for at least three years through their holdings of Class B common stock.

Further, the requirement that the Class B common stock of any holder of less than the Class B Threshold automatically converts to Class A common stock ensures that only investors with a significant economic investment (approximately two percent) in the Corporation own Class B common stock. As such, existing investors that do not have an economic stake in the Corporation above the Class B Threshold will not own Class B common stock after the proposed reclassification, and existing investors who will own Class B common stock after the proposed reclassification will cease to own Class B common stock once their economic stake in the Corporation falls below the Class B Threshold, further ensuring an appropriate balance between an investor's voting control and economic stake in the Corporation.

Limitations on Ownership and Voting Power

Section 5.01(b)(i) of the New Certificate of Incorporation defines the Class A Common Stock, the Non-Voting Class A Common Stock, the Class B Common Stock, the Non-Voting Class B Common Stock and any series of Preferred Stock of the Corporation as a single class of capital stock of the Corporation for purposes of Section 5.01(a)(i) and Section 5.01(a)(ii) of the New Certificate of Incorporation. As such, for purposes of determining compliance with the ownership

[3] It is anticipated that the Effective Time will coincide with the date of the closing of the IPO and will occur immediately prior thereto.

limitations set forth in Section 5.01(a)(i) and Section 5.01(a)(ii) of the New Certificate of Incorporation, the Class A and Class B shares, including both voting and non-voting shares, and, if applicable, any Preferred Shares, will be aggregated. As proposed, the New Certificate of Incorporation will not include a provision present in the Current Certificate of Incorporation that excludes non-voting stock from the ownership and voting limitations applicable to non-Member shareholders.[4] Retaining this provision would have caused an internal inconsistency with respect to aggregation of stock, and the Exchange does not believe that excluding non-voting stock from such limitations is necessary or consistent with the intent of the limitations. The New Certificate of Incorporation will thus maintain and enhance the limitations on aggregate ownership and total voting power that currently exist under the Current Certificate of Incorporation. References to an Investor Rights Agreement are also removed, as the relevant provisions of that agreement are expected to terminate upon the IPO.

Bylaws and Future Amendments to the Certificate of Incorporation

Article 9 and Article 15 of the New Certificate of Incorporation relate to the adoption of, and amendments to, the Corporation's bylaws, and future amendments to the Corporation's certificate of incorporation, respectively. Pursuant to Section 9.01, the New Certificate of Incorporation preserves the existing right of the Corporation's Board of Directors to adopt, amend or repeal the Corporation's bylaws. Pursuant to proposed Section 9.02(a) of the New Certificate of Incorporation, prior to a Change in Ownership, which is defined in Section 6.01(b) of the New Certificate of Incorporation as ''a transaction or series of transactions which results in the beneficial owners of the Class B [common stock] owning in the aggregate less than a majority of the total voting power of [the Corporation's outstanding securities] * * *'', the stockholders may adopt, amend or repeal the bylaws upon the affirmative vote of the majority of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class. Pursuant to proposed Section 9.02(b), upon a Change in Ownership, the stockholders may adopt, amend, or repeal the bylaws upon the affirmative vote of not less than seventy percent of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class.

Similarly, pursuant to proposed Section 15.01 of the New Certificate of Incorporation, prior to any Change in Ownership, and subject to Section 15.03, which requires any proposed amendment to be reviewed by the Board of Directors of the Exchange and filed with the Commission if required under Section 19 of the Act, the certificate of incorporation can be amended in any manner permitted by the General Corporation Law of the State of Delaware, as amended (''Delaware Law''), which today generally allows for the amendment of a certificate of incorporation by the affirmative vote of the majority of the outstanding stock entitled to vote thereon. Pursuant to proposed Section 15.02 of the New Certificate of Incorporation, upon a Change in Ownership, and again subject to Section 15.03, certain provisions of the certificate of incorporation can only be amended upon the affirmative vote of not less than seventy percent of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class. These provisions include Sections 4.04(b) and 4.04(c), relating to transfer restrictions and conversion rights, and Article 5 through Article 15, relating to limitations on ownership, transfer, and voting, defined terms, board of directors, duration of the Corporation, bylaws, indemnification, meetings and actions of stockholders, forum selection, compromise or other arrangement, Section 203 opt-out, and amendments, respectively.

The purpose for the distinction in the stockholders' ability to adopt, amend, or repeal the bylaws, or amend the certificate of incorporation, prior to versus upon a Change in Ownership is to maintain the existing ability of the Corporation's strategic investors to take such actions so long as they continue to control, through their aggregate ownership of Class A Common Stock and Class B Common Stock, a majority of the voting power of the Corporation's outstanding securities, and to adopt common public company supermajority requirements upon a Change in Ownership to deter actions being taken that the Corporation believes may be detrimental to the Corporation, including any actions which could detrimentally effect the Corporation's ability to comply with its unique responsibilities under the Act as the sole owner of two registered national securities exchanges in the United States. The purpose for limiting the application of the supermajority voting requirements to certain specified provisions of the certificate of incorporation is to focus such requirements on the most critical provisions of the certificate of incorporation.

Other Amendments

The New Certificate of Incorporation will amend and restate various other provisions of the Current Certificate of Incorporation in a manner that the Exchange believes are intended to reflect provisions that are more customary for publicly-owned companies (such as those relating to the indemnification of directors and business combinations, among others).

In particular, pursuant to changes proposed to Section 4.01 of the New Certificate of Incorporation, the Corporation will have the authority to issue 40 million shares of Preferred Stock, par value $0.01 per share (the ''Preferred Stock''), which the Corporation's Board of Directors may, by resolution from time to time, issue in one or more classes or series by filing a certificate pursuant to Delaware Law fixing the terms and conditions of such class or series of Preferred Stock. The Preferred Stock may be used by the Corporation to raise capital or to act as a safety mechanism for unwanted takeovers.

Pursuant to Section 4.04(c)(vii) of the New Certificate of Incorporation, the Corporation will be required to reserve and keep available out of its authorized but unissued capital stock shares of Class A common stock and Class B common stock solely for the purpose of effecting the conversion of such shares of capital stock. In addition, pursuant to Section 4.04(c)(viii), the Corporation may establish certain policies and procedures relating to the conversion of capital stock and the general administration of the Corporation's multi-class common stock structure.

Also, Article 6 of the New Certificate of Incorporation includes certain defined terms that are used in the New Certificate of Incorporation, such as ''Change in Ownership'', ''Change of Control'', and ''Related Persons'', among others.

Pursuant to Section 7.04 of the New Certificate of Incorporation, cumulative voting in the election of directors will be prohibited. If the Corporation were to permit cumulative voting, stockholders would be entitled to as many votes as

[4] The Exchange notes that there is no currently issued and outstanding non-voting stock of the Corporation, nor has the Corporation previously issued non-voting stock.

are equal to the number of votes which such stockholder would be entitled to cast for the election of directors with respect to such stockholder's shares of stock, multiplied by the number of directors to be elected by such holder, and such stockholder may cast all of such votes for a single director or may distribute them among the number to be voted for, as such stockholder may see fit. In contrast, in ''regular'' or ''statutory'' voting (*i.e.,* when cumulative voting is prohibited), stockholders may not give more than one vote per share to any single director nominee.

Pursuant to the changes proposed to Section 11.03 of the New Certificate of Incorporation, prior to a Change in Ownership, any action may be taken by the stockholders without a meeting, by written consent to the extent permitted under Delaware Law. Following a Change in Control, any action required or permitted to be taken at any meeting of the stockholders may be taken only upon the vote of stockholders at a meeting of the stockholders in accordance with Delaware Law and the New Certificate of Incorporation, and may not be taken by written consent without a meeting, except under certain circumstances.

Pursuant to Article 14 of the New Certificate of Incorporation, prior to any Change in Ownership, the Corporation will not be governed by Section 203 of Delaware Law; however, following a Change in Ownership, the Corporation will be governed by Section 203 of Delaware Law. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a business combination with anyone who owns at least fifteen percent of its common stock. This prohibition lasts for a period of three years after that person has acquired the fifteen percent ownership. The corporation may, however, engage in a business combination if it is approved by its board of directors before the person acquires the fifteen percent ownership or later by its board of directors and two-thirds of the stockholders of the public corporation. The restrictions contained in Section 203 do not apply if, among other things, the corporation's certificate of incorporation contains a provision expressly electing not to be governed by Section 203.

The New Certificate of Incorporation also makes various non-substantive, stylistic changes throughout.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposal is consistent with Section 6(b)(1) of the Act, because it retains and enhances existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is reclassifying its existing voting common stock into shares of Class A Common Stock and shares of Class B Common Stock, and is authorizing the potential future issuance of Preferred Stock. Class A Common Stock and Class B Common Stock have identical economic rights, and the only distinction between the Class A Common Stock and the Class B Common Stock, other than the transfer restrictions and conversion provisions applicable to such shares, is the number of votes attributable to each share. The consideration of Class A Common Stock, Non-Voting Class A Common Stock, Class B Common Stock, Non-Voting Class B Common Stock and any series of Preferred Stock as a single class of capital stock of the Corporation under the proposal for purposes of Section 5.01(a)(i) and Section 5.01(a)(ii) is consistent with and enhances the limitations on ownership in place under the Current Certificate of Incorporation. In other words, aggregation of all the capital stock of the Corporation for purposes of the ownership and voting limitations is consistent with the policy concerns sought to be addressed by these provisions of the Current Certificate of Incorporation and the proposed New Certificate of Incorporation. Specifically, these ownership and voting limitations ensure that no single Exchange Member or other person can exercise undue influence over the Exchange through ownership of a combination of different classes of stock issued by the Corporation.

Moreover, the voting limitations contained in Section 5.01(a)(iii) of the New Certificate of Incorporation are unaffected by the reclassification of the Corporation's common stock into Class A Common Stock and Class B Common Stock or the potential issuance of Preferred Stock in the future. To determine any stockholder's compliance with such voting limitations, all Class A Common Stock, Non-Voting Class A Common Stock, Class B Common Stock, Non-Voting Class B Common Stock and Preferred Stock would be aggregated under the Current Certificate of Incorporation as well as the proposed New Certificate of Incorporation.

(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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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–BATS–2011–033 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 No. SR–BATS–2011–033. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[5] 15 U.S.C. 78f(b).

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 changes 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 will also 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 No. SR–BATS–2011–033 and should be submitted on or before October 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23478 Filed 9–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65297; File No. SR–ISE–2011–54]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

September 8, 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 August 30, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 ISE is proposing to amend its transaction fees and rebates for adding and removing liquidity. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses a per contract transaction charge to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in 100 options classes (the ''Select Symbols'').[3] The purpose of this proposed rule change is to amend the list of Select Symbols on the Exchange's Schedule of Fees, titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols.'' Specifically, the Exchange proposes to add Apple Inc. (''AAPL''), Baidu, Inc. (''BIDU''), and iPath S&P 500 VIX Short-Term Futures ETN (''VXX'') to the list of Select Symbols.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on September 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to add AAPL, BIDU, and VXX to its list of Select Symbols to attract additional order flow to the Exchange. The Exchange anticipates that the addition of AAPL, BIDU, and VXX to the list of Select Symbols will attract market participants to transact equity options at the Exchange because of the available rebates.

The Exchange believes that it is equitable to amend the list of Select Symbols by adding AAPL, BIDU, and VXX because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the applicable maker/taker fees and rebates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2011–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–54 and should be submitted on or before October 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23441 Filed 9–13–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65293; File No. SR–BX–2011–063]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the BOX Fee Schedule

September 8, 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 August 31, 2011, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. (the ''Exchange'') proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC (''BOX''). While changes to the BOX Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 1, 2011. The text of the proposed changes is attached as Exhibit 5. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 1 Trading Fees for Public Customer Accounts

Currently, the trading fee for Public Customers is $0.10 per executed contract for all non-PIP [5] transactions. The Exchange proposes to reduce this fee to $0.07.

Section 2 Trading Fees for Broker-Dealer Proprietary Accounts

Currently, the trading fee for broker-dealer proprietary accounts is $0.25 per contract traded for all classes and all transactions. The Exchange proposes to increase this fee to $0.40 per contract traded for all non-PIP transactions.

Fees and Credits in Section 7a

Currently, Section 7a of the BOX Fee Schedule specifies a $0.55 credit for removing liquidity and $0.55 fee for adding liquidity for transactions in options classes not in the Penny Pilot program (''Non-Penny classes'') on the BOX Book, and a $0.15 credit for removing liquidity and $0.15 fee for adding liquidity for transactions in Penny Pilot classes. These credits and fees apply equally to all account types, whether Public Customer, Broker Dealer, or Market Maker, and are in addition to any applicable trading fees, as described in Sections 1 through 3 of the BOX Fee Schedule.

The Exchange proposes to increase the existing credits and fees within Section 7a for transactions in Non-Penny classes on the BOX Book from $0.55 to $0.65, and in Penny Pilot classes, from $0.15 to $0.22.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Price Improvement Period (''PIP'') in Chapter V, Section 18 of the BOX Trading Rules.

Correction to QQQ Symbol in Section 7d

The Exchange also proposes a technical correction to the symbol for the QQQQs referenced in various provisions of Section 7d of the BOX Fee Schedule. The correct symbol is QQQ and was previously incorrectly referenced as QQQQ.

The proposed decrease in transaction fees for Public Customers, increase in fees for broker-dealer proprietary accounts, and increase in the credit for removing liquidity and fee for adding liquidity on BOX are generally intended to attract additional order flow and increase liquidity for the benefit of all BOX market participants. Additionally, BOX notes that it is one of nine options markets in the national market system for standardized options. Sending orders to and trading on BOX is entirely voluntary. Under these circumstances, BOX transaction fees must be competitive to attract order flow, execute orders, and grow its market. As such, BOX believes its fees are fair and reasonable.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the changes proposed are an equitable allocation of reasonable fees and charges among BOX Options Participants. The Exchange also believes that there is an equitable allocation of reasonable credits among BOX Options Participants.

The Exchange believes that it is equitable to provide a credit to any Participant that removes liquidity from the BOX Book. The Exchange further believes an increase in this credit may attract additional order flow to BOX, resulting in greater liquidity to the benefit of all market participants. The Exchange believes that the proposed fee for adding liquidity and credit for removing liquidity in non-PIP transactions are equitable and non-discriminatory because such fees and credits apply uniformly to all categories of participants, across all account types and options classes. Further, the Exchange believes the proposed fees and credits related to non-PIP transactions to be reasonable. BOX operates within a highly competitive market in which market participants can readily direct order flow to any of eight other competing venues if they deem fees at a particular venue to be excessive. The changes proposed by this filing are intended to attract order flow to BOX by offering incentives to all market participants to submit their orders to BOX.

The Exchange notes that this proposed rule change will increase both the fees and credit for non-PIP transactions. The result is that BOX will collect an increased fee from Participants that add liquidity on BOX and credit another Participant an equal amount for removing liquidity. Stated otherwise, the collection of the increased fees will not result in additional revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants to attract additional order flow. The Exchange believes it is appropriate to provide incentives to market participants to direct order flow to remove liquidity from BOX, similar to various and widely-used payment for order flow programs used by other options exchanges. While BOX provides incentives to market participants to remove liquidity from BOX, the cumulative effect of the changes proposed will be an increase in fees for those participants that add liquidity in non-PIP transactions. The Exchange believes that incentives provided to those that remove liquidity will attract additional order flow to BOX. Further, the Exchange believes that a cumulative increase in transaction fees will not deter participants from adding liquidity on BOX, and that they will be more likely to add more liquidity to the BOX market so that they may interact with those participants seeking to remove liquidity.

The Exchange believes the transaction fees proposed for non-PIP transactions in broker-dealer proprietary accounts are reasonable. As stated above, BOX operates within a highly competitive business. The proposed increase in fees charged to broker-dealer proprietary accounts is designed to be comparable to the costs that such accounts would be charged at competing venues. Further, and as stated above, the Exchange believes that participants that add liquidity on BOX will not be impaired by the cumulative increase to fees on broker-dealer proprietary accounts proposed.

Moreover, the Exchange believes it is equitable and not unfairly discriminatory to charge broker-dealer proprietary accounts comparably higher fees than BOX Market Makers. Market Makers have obligations that other Participants do not. In particular, they must maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements. As such, the Exchange believes it is appropriate that Market Makers be charged lower transaction fees on BOX. The Exchange also believes it is equitable and not unfairly discriminatory that Public Customer be charged lower transaction fees than broker-dealers on BOX. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for customer benefit. As such, the Exchange believes the proposed reduction in Public Customer transaction fees is appropriate and not unfairly discriminatory.

The Exchange believes the proposed reduction in Public Customer transaction fees is reasonable. The Exchange believes it promotes the best interests of investors to have lower transaction costs for Public Customers, and that the proposed reduction in fees will attract additional Public Customer order flow to BOX. Additionally and as previously stated, the Exchange believes the proposed increase in the credit for removing liquidity will attract additional order flow to BOX, providing greater liquidity to the benefit of all market participants.

The proposed changes will allow the fees charged on BOX to remain competitive with other exchanges as well as apply such fees in a manner which is equitable among all BOX Participants. The Exchange believes the proposed transaction fees and credits are fair and reasonable and must be competitive with fees and credits in place on other exchanges. Further, the Exchange believes that this competitive marketplace impacts the fees and credits present on BOX today and influences the proposal set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–2011–063 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–063. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NW., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov*. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–063 and should be submitted on or before October 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23384 Filed 9–13–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65286; File No. SR–DTC–2011–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Relating to a New Daily Report Subscription for Security Position Reports

September 7, 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 August 24, 2011, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on August 31, 2011, and September 7, 2011, filed Amendment Nos. 1 and 2, respectively, to the proposed rule change [3] as described in Items I and II below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] DTC's amendment of August 31, 2011, clarified that the effective date of the proposed fee schedule would be the date that the Commission approves the proposed rule change. DTC's amendment of September 7, 2011, added a statement that DTC believes that the proposed rule change is consistent with Rule 17Ad-8, 17 CFR 240.17Ad-8, which is reflected in the last paragraph of Section II.A below.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to add a new Daily Report subscription category to its Security Position Report (''SPR'') Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

SPRs are reports produced by DTC that provide information on the holdings on a specified day of an issuer's security in DTC participant accounts. The SPR service enables an issuer, trustee, or authorized third party to request a report that reflects each participant's closing position recorded by DTC for a specific issue on a subscription basis. Currently, DTC offers subscription on a weekly, monthly, dividend record date, and special request (*i.e.,* an ''as needed'') basis.[4] With respect to special request SPRs, the entities requesting these reports tend to be corporate issuers seeking holder information with respect to their equity securities.

Recently, some authorized users of the SPR service have been ordering the special request SPR on a daily basis in order to satisfy certain tax reporting requirements in non-US markets. DTC's fees for special request SPRs are currently $120 per CUSIP. As a result of the expense associated with ordering SPRs on a daily basis, the non-US issuer/trustee community has requested that DTC create a daily subscription for SPRs so that a manual tracking process implemented on an interim basis can be replaced by the more efficient SPR process. DTC reviewed this request and determined that it would be feasible for

[4] For information on DTC's current rules relating to SPRs, refer to *Securities Exchange Act* Release No. 52393 (Sept. 8, 2005), 70 FR 54598 (Sept. 15, 2005) [File No. SR–DTC–2005–12].

it to offer SPR subsriptions on a daily basis.

This proposed change to the SPR service will require an update to the DTC Fee Schedule to reflect the new subscription type. Specifically, DTC proposes to charge $9,450 per year for the first recipient of the SPR for a security issue and $6,785 for each additional recipient of the SPR for that security. In addition, DTC proposes to charge $2,785 per year for each additional CUSIP in the same family (*i.e.,* securities whose CUSIP numbers have the same first six characters) of securities, one of which is the subject of an existing Daily Report annual subscription. A one year minimum Daily Report subscription would be required to qualify for this new subscription category.

In addition, DTC proposes to offer a new ''Commercial Paper Family Report'' that would indicate DTC's participants' closing positions in commercial paper securities as of a specific date. The fee for this report would be $22 per report for each additional CUSIP in the same family, which, similar to the proposed Daily Report subscription explained above, refers to securities with the same base CUSIP number (*i.e.,* securities whose CUSIP numbers have the same first six characters), of securities, one of which is the subject of an existing Daily Report annual subscription.

DTC is also updating its SPR Fee Schedule with certain technical changes that are detailed in Exhibit 5 to DTC's filing and that can be viewed online at *http://www.dtcc.com/legal/rule_filings/dtc/2011.php.*

DTC states that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder applicable to DTC because it is designed to facilitate the distribution of security position information to issuers and trustees in connection with their regulatory reporting obligations and, as such, promotes the protection of investors and the public interest. In addition and more specifically, DTC believes that the proposed rule filing is consistent with Rule 17Ad–8 under the Act [6] in that the proposed fees are designed to recover the reasonable costs of providing the securities position listing. DTC based its pricing for the provision of the securities position listing using the underlying costs of providing the service versus the projected volumes.

[5] 15 U.S.C. 78q–1.

[6] *Supra* note 2.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

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 ninety 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–DTC–2011–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–DTC–2011–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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 filings also will be available for inspection and copying at DTC's principal office and DTC's Web site at *http://www.dtcc.com/legal/rule_filings/dtc/2011.php.* 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 No. SR–DTC–2011–07 and should be submitted on or before October 5, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23380 Filed 9–13–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65281; File No. SR–FINRA–2011–031

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Amend FINRA Rule 9251 to Explicitly Protect From Discovery Those Documents That Federal Law Prohibits FINRA From Disclosing

September 7, 2011.

I. Introduction

On July 8, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the *Securities Exchange Act of 1934* (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

amend FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing. The proposed rule change was published for comment in the **Federal Register** on July 26, 2011.[3] The Commission received two comment letters on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

FINRA Rule 9251 delineates the types of documents that FINRA's Department of Enforcement (''Enforcement'') and Department of Market Regulation (''Market Regulation'') must produce to respondents during the discovery phase of a disciplinary proceeding. The rule also explicitly shields certain types of documents from production. For example, the rule provides that Enforcement and Market Regulation may withhold documents that are protected by attorney-client privilege or constitute attorney work product.[5] The rule also allows documents to be withheld where a hearing officer determines that they are irrelevant to the proceeding or for other good cause.[6] The rule does not, however, explicitly shield from discovery documents that federal law prohibits FINRA from disclosing.

The rule contains procedural safeguards to protect against inappropriate withholding of documents by Enforcement and Market Regulation. Specifically, the rule provides that the hearing officer may require Enforcement or Market Regulation to submit to the hearing officer either a list of withheld documents or any document withheld so that the hearing officer may privately review it to determine the appropriate status of a withheld document.[7] Upon review, the hearing officer may order Enforcement or Market Regulation to make the list or document withheld available to other parties.[8] Moreover, the rule prohibits Enforcement or Market Regulation from withholding a document, or part thereof, that contains material exculpatory evidence.[9]

FINRA's proposal would amend FINRA Rule 9251 to explicitly protect from discovery documents that are prohibited from disclosure pursuant to federal law. Currently, when Enforcement and Market Regulation possess a document that federal law prohibits them from disclosing, they must affirmatively seek a hearing officer determination that they can withhold it on the grounds of lack of relevancy or for other good cause.[10] The proposed rule change will eliminate the need for such a hearing officer determination by adding a new provision that expressly provides that Market Regulation or Enforcement shall withhold a document from production if disclosure is prohibited by federal law.

Certain of the rule's procedural safeguards discussed above would apply to documents withheld pursuant to this new provision. As discussed above, a hearing officer may review any documents withheld pursuant to this new provision, and may order Enforcement or Market Regulation to make the list of withheld documents or the documents withheld available to other parties. However, the proposed rule change precludes a hearing officer from requiring Enforcement or Market Regulation to make the list of documents withheld or any document withheld available to other parties if federal law prohibits disclosure of the document or the document's existence. Moreover, the rule's prohibition on withholding documents, or parts thereof, that contain exculpatory evidence does not apply to documents prohibited from disclosure by federal law.

FINRA stated that the proposed rule change will be effective 30 days following publication of the *Regulatory Notice* announcing Commission approval.

III. Summary of Comment Letters

Both commenters questioned the fairness of the proposed rule change, and noted concerns about the opportunities afforded to those charged in a FINRA disciplinary proceeding.[11] In particular, one commenter stated that if the present system results in ''testing'' the federal laws that may prevent disclosure of certain documents, then the current system should continue as is.[12] The commenter was particularly concerned about the ability of Market Regulation or Enforcement to withhold documents that contain exculpatory evidence.[13] While the commenter appreciated FINRA's desire to streamline the disciplinary process, the commenter believed that given the stakes involved, ''every opportunity and effort'' should be afforded to those charged in a disciplinary proceeding.[14]

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and the comments received, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 15A(b)(8) of the Act,[17] which requires that the rules of the association provide a fair procedure for the disciplining of members and associated persons.

More specifically, the Commission believes that clarifying that Market Regulation and Enforcement shall withhold documents prohibited from disclosure by federal law both promotes a fair and efficient disciplinary process and helps ensure compliance with federal law by avoiding the need for unnecessary ''good cause'' motions regarding documents that federal law prohibits FINRA from producing during a disciplinary proceeding.

The Commission also believes that the proposed rule change is subject to adequate procedural safeguards to protect against inappropriate use by FINRA and that address the commenters' concerns. Specifically, a hearing officer may review and determine whether a document was appropriately withheld by Market Regulation or Enforcement as prohibited from disclosure by federal law. If the hearing officer determines that the document is not prohibited from disclosure by federal law, the hearing officer may order the document be made available to the other parties.

While the Commission appreciates the commenter's concern about FINRA withholding exculpatory evidence, the

[3] *See Securities Exchange Act* Release No. 64934 (July 20, 2011), 76 FR 44645 (July 26, 2011) (''Notice'').

[4] *See* letter from Neal E. Nakagiri, President, Chief Executive Officer and Chief Compliance Officer, NPB Financial Group, LLC, dated July 27, 2011 (''NPB Letter''); letter from Joyce Dillard, dated August 16, 2011.

[5] FINRA Rule 9251(b)(1)(A).

[6] FINRA Rule 9251(b)(1)(D).

[7] *See* FINRA Rule 9251(c).

[8] *Id.*

[9] FINRA Rule 9251(b)(2).

[10] *See* FINRA Rule 9251(b)(1)(D).

[11] *See supra,* note 4.

[12] NPB Letter.

[13] *Id.*

[14] *Id.*

[15] In approving this proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] 15 U.S.C. 78*o*–3(b)(8).

proposed rule would not change current practice, as FINRA currently cannot legally disclose a document—even if the document contains exculpatory evidence—if federal law prohibits disclosure of the document in that instance. Moreover, the Commission believes that as part of determining whether FINRA appropriately withheld a document, the hearing officer would need to review the applicable federal law to assess whether the document at issue is, in fact, prohibited from disclosure.

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–FINRA–2011–031) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23377 Filed 9–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65283; File No. SR–NYSEAmex–2011–67]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Relating to Fees for Trading Securities Listed on the Nasdaq Stock Market LLC Pursuant to Unlisted Trading Privileges

September 7, 2011.

Pursuant to Section 19(b)(1)[1] of the *Securities Exchange Act of 1934* (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 1, 2011, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2011 Price List (''Price List'') for certain fees relating to trading pursuant to unlisted trading privileges (''UTP'') of securities listed on the Nasdaq Stock Market LLC (''Nasdaq''). The proposed amendment to the Exchange's Price List for equities is attached hereto as Exhibit 5. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List for certain fees relating to trading Nasdaq securities pursuant to UTP. The amended pricing will become operative on September 1, 2011.

Currently, market participants, Supplemental Liquidity Providers (''SLPs'') and Designated Market Makers (''DMMs'') are charged a fee of $0.0027 per share for orders in Nasdaq securities with a share price of $1 or more traded pursuant to UTP that take liquidity. Under the proposal, there will be a fee of $0.0004 per share for orders that take liquidity.

Currently, market participants and DMMs are charged a fee of $0.0029 per share for orders in Nasdaq securities with a share price of $1 or more that route to other markets when reduced fee volume requirements are not met. Under the proposal, there would be a fee of $0.0025 per share for such orders.

Market participants, other than DMMs and SLPs, that provide liquidity in Nasdaq securities with a share price of $1 or more traded pursuant to UTP are currently paid a rebate of $0.0030 per share. Under the proposal, such market participants will be paid a rebate of $0.0010 per share.

Currently, for orders in Nasdaq securities with a share price of $1 or more traded pursuant to UTP that provide liquidity, DMMs, as well as SLPs that meet their quoting requirements pursuant to Rule 107B are paid a rebate of $0.0031 per share, and SLPs that do not meet their quoting requirements are paid a rebate of $0.0030 per share for orders that provide liquidity. Under the proposal, the rebate will be $0.0011 per share for orders that provide liquidity for SLPs that meet their quoting requirements while SLPs that provide liquidity but do not meet their quoting requirements will be paid a rebate of $0.0010 per share. The rebate will be $0.0020 per share for orders that provide liquidity for DMMs.

Currently, market participants and SLPs are paid a rebate of $0.0036 per share for executions of displayed liquidity in Nasdaq securities with a share price of $1 or more when they are adding liquidity in orders that originally display a minimum of 2,000 shares with a trading price of at least $5.00 per share, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares. Under the proposal, such market participants and SLPs will be paid a rebate of $0.0020 per share.

Currently, DMMs receive a rebate of $0.0036 per share in Nasdaq securities with a share price of $1 or more traded pursuant to UTP for executions of the displayed portions of s-Quotes that provide liquidity and display 2,000 shares or more at the time of execution with a trading price of at least $5.00 per share. Under the proposal, DMMs will be paid a rebate of $0.0020 per share.

In a rule filing submitted on March 29, 2011,[4] the Exchange adopted a new tier with a reduced ''take'' fee of $0.0019 per share (compared with $0.0027 then in effect) and a reduced routing fee of $0.0019 per share (compared with $0.0029 then in effect) for market participants and DMMs that meet certain average daily executed volume requirements in either shares or a combination of shares and contracts traded on the NYSE Amex options market. Under the proposal, this tier and the related routing fee will be

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 64195 (April 5, 2011), 75 FR 20428 (April 12, 2011) (SR–NYSEAmex–2011–21).

eliminated for all Nasdaq securities traded pursuant to UTP.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms.

With respect to the reduction of fees for taking liquidity, the Exchange believes that the reduction of fees will attract more volume to the Exchange from participants that are seeking to lower their overall transaction costs and thereby will result in a more competitive market in the trading of Nasdaq securities pursuant to UTP. Additionally, the approach for lowering fees for taking liquidity was previously adopted by NASDAQ OMX BX, Inc. in 2009 in Tape A and C securities, lowering the fee for taking liquidity from $0.0014 per share to a rebate of $0.0006 per share.[7] The Exchange further believes that lowering the rebate for DMMs, SLPs, and market participants is appropriate in light of the reduction of fees for taking liquidity.

With respect to lowering the fee for routing to other markets to $0.0025, the Exchange notes that the practice of offering routing fees at a discount to the fees of taking liquidity at most other markets has been previously adopted by other markets, including BATS BYX with its CYCLE routing fee of $0.0028 per share.[8]

With respect to the reduction in rebates to market participants, SLPs, and DMMs for providing liquidity in 2,000 or more share orders for securities priced at $5 or more, the Exchange believes that the proposed rebates are fair given that the Exchange is reducing the fee for taking liquidity. The Exchange believes the fee change will attract more liquidity, lower transaction costs, and improve overall trading.

The Exchange believes that maintaining a tier that allows market participants, SLPs, and DMMs to qualify for a reduced fee for taking liquidity will no longer be necessary as the fee for taking liquidity was greatly reduced.

With respect to the higher rebate of $0.0020 per share for DMMs providing liquidity compared with the rebate of $0.0011 per share for SLPs providing liquidity in stocks in which they meet their quoting requirements, the Exchange notes that the approach of paying DMMs a higher rebate than SLPs has been previously adopted by the New York Stock Exchange LLC (''NYSE'') with NYSE DMMs receiving rebates of up to $0.0035 per share compared with NYSE SLPs receiving rebates of up to $0.0022 per share.[9] The Exchange believes that the proposed rebates are fair given the greater DMM obligations compared to SLP obligations.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which customers may qualify for higher liquidity provider credits.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes or changes a due, fee, or other charge imposed on its members by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–67 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–2011–67. 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See Securities Exchange Act* Release No. 59682 (Apr. 1, 2009), 74 FR 16015 (Apr. 8, 2009) (SR–NASDAQ OMX BX–2009–018).

[8] *See* BATS BYX Exchange Fee Schedule, available at *http://batstrading.com/resources/regulation/rule_book/BYX_Fee_Schedule.pdf.*

[9] *See Securities Exchange Act* Release Nos. 58921 (November 7, 2008), 73 FR 68478 (November 18, 2008) (SR–NYSE–2008–111) (notice of filing and immediate effectiveness of proposed rule change to establish system of rebates for Designated Market Makers); 63642 (January 4, 2011), 76 FR 1653 (January 11, 2011) (SR–NYSE–2010–87) (notice of filing and immediate effectiveness of proposed rule change to amend the Exchange Price List).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

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 publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–67 and should be submitted on or before October 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23378 Filed 9–13–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12776 and #12777]

New York Disaster Number NY–00108

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 and continuing through 09/05/2011.

Effective Date: 09/05/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New York, dated 08/31/2011 is hereby amended to establish the incident period for this disaster as beginning 08/26/2011 and continuing through 09/05/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23588 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12782 and #12783]

New Jersey Disaster Number NJ–00024

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4021–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/27/2011 through 09/05/2011.

Effective Date: 09/05/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Jersey, dated 08/31/2011, is hereby amended to establish the incident period for this disaster as beginning 08/27/2011 and continuing through 09/05/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23581 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12780 and #12781]

New Jersey Disaster Number NJ–00023

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4021–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/27/2011 and continuing through 09/05/2011.

Effective Date: 09/05/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New Jersey, dated 08/31/2011 is hereby amended to establish the incident period for this disaster as beginning 08/27/2011 and continuing through 09/05/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23579 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12782 and #12783]

New Jersey Disaster Number NJ–00024

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4021–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/27/2011 and continuing.

Effective Date: 09/04/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

[12] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Jersey, dated 08/31/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bergen, Burlington, Essex, Hudson, Middlesex, Morris, Ocean, Passaic, Somerset, Union.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23580 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12803 and #12804]

Massachusetts Disaster #MA–00040

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Massachusetts (FEMA–4028–DR), dated 09/03/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 through 08/29/2011.

DATES: *Effective Date:* 09/03/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/03/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Berkshire, Franklin.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128038 and for economic injury is 128048.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23563 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12738 and #12739]

Nebraska Disaster Number NE–00041

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–4013–DR), dated 08/12/2011.

Incident: Flooding.

Incident Period: 05/24/2011 through 08/01/2011.

Effective Date: 09/07/2011.

Physical Loan Application Deadline Date: 10/11/2011.

EIDL Loan Application Deadline Date: 05/14/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Nebraska, dated 08/12/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Lincoln, Nemaha, Richardson.

Contiguous Counties: (Economic Injury Loans Only):

Kansas: Brown, Doniphan, Nemaha.

Missouri: Atchison, Holt.

Nebraska: Custer, Dawson, Frontier, Hayes, Johnson, Keith, Logan, Mcpherson, Pawnee, Perkins.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23592 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12778 and #12779]

New York Disaster Number NY–00109

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 09/05/2011.

DATES: *Effective Date:* 09/05/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 08/31/2011, is hereby amended to establish the incident period for this disaster as beginning 08/26/2011 and continuing through 09/05/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23590 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12784 and #12785]

Vermont Disaster Number VT–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4022–DR), dated 09/01/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 and continuing.

Effective Date: 09/06/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Vermont, dated 09/01/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Caledonia.

Contiguous Counties: (Economic Injury Loans Only):

Vermont: Essex, Orleans.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23577 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12786 and #12787]

Vermont Disaster Number VT–00022

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–4022–DR), dated 09/01/2011.

Incident: Tropical Storm Irene

Incident Period: 08/27/2011 and continuing.

DATES: *Effective Date:* 09/02/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan. Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Vermont, dated 09/01/2011, is hereby amended to reestablish the incident period for this disaster as beginning 08/27/2011 and continuing.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23574 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12782 and #12783]

New Jersey Disaster Number NJ–00024

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4021–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/27/2011 and continuing.

Effective Date: 09/03/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Jersey, dated 08/31/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Camden, Gloucester, Hunterdon, Mercer, Monmouth, Sussex, Warren.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23564 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12801 and #12802]

Connecticut Disaster #CT–00023

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Connecticut (FEMA–4023–DR), dated 09/02/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 and continuing.

DATES: *Effective Date:* 09/02/2011.

Physical Loan Application Deadline Date: 11/01/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/04/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,

409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/02/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, Windham.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere:	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 128018 and for economic injury is 128028.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23561 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12790 and #12791]

North Carolina Disaster Number NC–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–4019–DR), dated 09/01/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 through 09/01/2011.

Effective Date: 09/01/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2012.

Addresses: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of North Carolina, dated 09/01/2011, is hereby amended to establish the incident period for this disaster as beginning 08/25/2011 and continuing through 09/01/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23560 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12778 and #12779]

New York Disaster Number NY–00109

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 and continuing.

DATES: *Effective Date:* 09/04/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 08/31/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Sullivan.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23558 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12774 and #12775]

North Carolina Disaster Number NC–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4019–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 through 09/01/2011.

Effective Date: 09/01/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of North Carolina, dated 08/31/2011 is hereby amended to establish the incident period for this disaster as beginning 08/25/2011 and continuing through 09/01/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23427 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12774 and #12775]

North Carolina Disaster Number NC–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4019–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 and continuing.

Effective Date: 09/02/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of North Carolina, dated 08/31/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Currituck, Onslow, Pitt, Washington.

Contiguous Counties: (Economic Injury Loans Only):

North Carolina: Camden, Pender, Wilson.

Virginia: Chesapeake City, Virginia Beach City.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23424 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12790 and #12791]

North Carolina Disaster Number NC–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–4019–DR), dated 09/01/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 through 09/01/2011.

Effective Date: 09/01/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of North Carolina, dated 09/01/2011, is hereby amended to establish the incident period for this disaster as beginning 08/25/2011 and continuing through 09/01/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23423 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12776 and #12777]

New York Disaster Number NY–00108

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 and continuing.

Effective Date: 09/01/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New York, dated 08/31/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Nassau, Rensselaer, Westchester.

Contiguous Counties: (Economic Injury Loans Only):

New York: Bronx, Queens, Rockland, Suffolk.

New Jersey: Bergen.

Vermont: Bennington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23422 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12776 and #12777]

New York Disaster Number NY–00108

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 and continuing.

DATES: *Effective Date:* 09/02/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration

for the State of New York, dated 08/31/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Clinton, Montgomery, Orange, Rockland, Saratoga, Suffolk, Sullivan, Warren.

Contiguous Counties: (Economic Injury Loans Only):

New York: Fulton.
New Jersey: Passaic, Sussex.
Pennsylvania: Pike.
Vermont: Grand Isle.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23420 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12774 and #12775]

North Carolina Disaster Number NC–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4019—DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 through 09/01/2011.

DATES: *Effective Date:* 09/04/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of North Carolina, dated 08/31/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Bertie, Brunswick, Camden, Chowan, Duplin, Edgecombe, Gates, Greene, Hertford, Johnston, Jones, Martin, Nash, New Hanover, Northampton, Pasquotank, Perquimans, Vance, Warren, Wilson.

Contiguous Counties: (Economic Injury Loans Only):

North Carolina: Columbus, Granville, Harnett, Sampson, Wake.
South Carolina: Horry.
Virginia: Brunswick, Greensville, Mecklenburg, Southampton, Suffolk City.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23434 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12776 and #12777]

New York Disaster Number NY–00108

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4020–DR), dated08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 and continuing.

Effective Date: 09/03/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New York, dated 08/31/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Otsego

Contiguous Counties: (Economic Injury Loans Only):

New York: Herkimer, Madison, Oneida

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23428 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12784 and #12785]

Vermont Disaster #VT–00021

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4022–DR), dated 09/01/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/29/2011 and continuing.

Effective Date: 09/01/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/01/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Chittenden, Rutland, Washington, Windsor.

Contiguous Counties (Economic Injury Loans Only):

Vermont: Addison, Bennington, Caledonia, Franklin, Grand Isle, Lamoille, Orange, Windham.
New Hampshire: Grafton, Sullivan.
New York: Clinton, Essex, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	5.000

	Percent
Homeowners Without Credit Available Elsewhere:	2.500
Businesses With Credit Available Elsewhere:	6.000
Businesses Without Credit Available Elsewhere:	4.000
Non-Profit Organizations With Credit Available Elsewhere: ..	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 127848 and for economic injury is 127850.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23425 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12811 and #12812]

New Hampshire Disaster #NH–00019

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–4026–DR), dated 09/07/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/26/2011 and continuing.

Effective Date: 09/07/2011.

Physical Loan Application Deadline Date: 11/07/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/07/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/07/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Carroll, Grafton.

Contiguous Counties (Economic Injury Loans Only): New Hampshire: Belknap, Coos, Merrimack, Strafford, Sullivan.

Maine: Oxford, York.

Vermont: Caledonia, Essex, Orange, Windsor.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128118 and for economic injury is 128120.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23554 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12768 and #12769]

Puerto Rico Disaster Number PR–00014

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated 08/27/2011.

Incident: Hurricane Irene.

Incident Period: 08/21/2011 and continuing.

Effective Date: 09/03/2011.

Physical Loan Application Deadline Date: 10/26/2011.

EIDL Loan Application Deadline Date: 05/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of PUERTO RICO, dated 08/27/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Aguas Buenas, Arroyo, Cidra, Coamo, Comerio, Humacao, Jayuya, Juncos, Orocovis, Patillas, Ponce.

Contiguous Counties: (Economic Injury Loans Only):

Puerto Rico: Adjuntas, Barranquitas, Bayamon, Ciales, Corozal, Juana Diaz, Maunabo, Morovis, Naguabo, Naranjito, Penuelas, Santa Isabel, Utuado, Villalba, Yabucoa.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23551 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12797 and #12798]

Connecticut Disaster #CT–00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4023–DR), dated 09/02/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 and continuing.

DATES: *Effective Date:* 09/02/2011.

Physical Loan Application Deadline Date: 11/03/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/04/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business

Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/02/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, Windham.

Contiguous Counties (Economic Injury Loans Only):

Massachusetts: Berkshire, Hampden, Worcester.

New York: Dutchess, Putnam, Westchester.

Rhode Island: Kent, Providence, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127978 and for economic injury is 127980.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23593 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12799 and #12800]

Massachusetts Disaster #MA–00039

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–4028–DR), dated 09/03/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 through 08/29/2011.

Effective Date: 09/03/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/03/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Berkshire, Franklin.

Contiguous Counties: (Economic Injury Loans Only):

Massachusetts: Hampden, Hampshire, Worcester.

Connecticut: Litchfield.

New Hampshire: Cheshire.

New York: Columbia, Dutchess, Rensselaer.

Vermont: Bennington, Windham.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127998 and for economic injury is 128000.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23589 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12780 and #12781]

New Jersey Disaster Number NJ–00023

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4021–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/27/2011 and continuing.

DATES: *Effective Date:* 09/03/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New Jersey, dated 08/31/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Atlantic, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Middlesex, Monmouth, Salem, Sussex, Warren.

Contiguous Counties: (Economic Injury Loans Only):
New Jersey: Burlington, Ocean.
Delaware: New Castle.
Pennsylvania: Bucks, Delaware, Monroe, Northampton, Philadelphia, Pike.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23585 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12790 and #12791]

North Carolina Disaster #NC–00037

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–4019–DR), dated 09/01/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 and continuing.

DATES: *Effective Date:* 09/01/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/01/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Beaufort, Brunswick, Carteret, Chowan, Columbus, Craven, Dare, Duplin, Edgecombe, Halifax, Hyde, Jones, Lenoir, Martin, Nash, Onslow, Pamlico, Pender, Tyrrell, Wilson.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127908 and for economic injury is 127918.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23583 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12788 and #12789]

Kentucky Disaster #KY–00042

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4008–DR), dated 09/01/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/19/2011 through 06/23/2011.

DATES: *Effective Date:* 09/01/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/01/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Bell, Knox, Perry.

Contiguous Counties (Economic Injury Loans Only):
Kentucky: Breathitt, Clay, Harlan, Knott, Laurel, Leslie, Letcher, Owsley, Whitley.
Tennessee: Claiborne.
Virginia: Lee.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12788B and for economic injury is 127890.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23582 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12778 and #12779]

New York Disaster Number NY–00109

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 and continuing.

Effective Date: 09/02/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of NEW YORK, dated 08/31/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Kings.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23572 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12770 and #12771]

Puerto Rico Disaster Number PR–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated 08/27/2011.

Incident: Hurricane Irene.

Incident Period: 08/21/2011 and continuing.

DATES: *Effective Date:* 09/03/2011.

Physical Loan Application Deadline Date: 10/26/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Puerto Rico, dated 08/27/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Adjuntas, Aguada, Aibonito, Anasco, Arecibo, Arroyo, Barranquitas, Bayamon, Caguas, Canovanas, Catano, Ciales, Cidra, Coamo, Corozal, Culebra, Fajardo, Guayama, Guaynabo, Gurabo, Humacao, Jayuya, Juana Diaz, Las Piedras, Maricao, Maunabo, Naranjito, Rincon, Rio Grande, Sabana Grande, Salinas, San Lorenzo, Santa Isabel, Trujillo Alto, Vieques, Yabucoa, Yauco.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23571 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12807 and #12808]

Pennsylvania Disaster #PA–00043

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Pennsylvania (FEMA–4025–DR), dated 09/03/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 08/30/2011.

Effective Date: 09/03/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/03/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Chester, Northampton, Sullivan, Susquehanna, Wyoming.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128078 and for economic injury is 128088.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23567 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12805 and #12806]

Virginia Disaster #VA–00038

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA–4024–DR), dated 09/03/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 08/28/2011.

Effective Date: 09/03/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

President's major disaster declaration on 09/03/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Chesapeake City, Emporia City, Essex, Hampton City, Hopewell City, Isle of Wight, James City, Lancaster, Middlesex, New Kent, Newport News City, Norfolk City, Poquoson City, Portsmouth City, Richmond, Southampton, Suffolk City, Sussex, Virginia Beach City, Westmoreland, Williamsburg City, York.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128058 and for economic injury is 128068.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23562 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12784 and #12785]

Vermont Disaster Number VT–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4022–DR), dated 09/01/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 and continuing.

Effective Date: 09/06/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155,

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Vermont, dated 09/01/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Caledonia.

Contiguous Counties: (Economic Injury Loans Only):

Vermont: Essex, Orleans.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23436 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12756 and #12757]

South Dakota Disaster Number SD–00042

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1984–DR), dated 08/23/2011.

Incident: Flooding.

Incident Period: 03/11/2011 through 07/22/2011.

Effective Date: 09/02/2011.

Physical Loan Application Deadline Date: 10/24/2011.

EIDL Loan Application Deadline Date: 05/23/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of South Dakota, dated 08/23/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Yankton.

Contiguous Counties: (Economic Injury Loans Only):

South Dakota: Turner.

Nebraska: Cedar.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23435 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12784 and #12785]

Vermont Disaster Number VT–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4022–DR), dated 09/01/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 and continuing.

Effective Date: 09/04/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155,

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Vermont, dated 09/01/2011 is hereby amended to reestablish the incident period for this disaster as beginning 08/27/2011 and continuing.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator, for Disaster Assistance.

[FR Doc. 2011–23433 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12786 and #12787]

Vermont Disaster #VT–00022

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–4022–DR), dated 09/01/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/29/2011 and continuing.

DATES: *Effective Date:* 09/01/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/01/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Lamoille, Orange, Orleans, Rutland, Washington, Windham, Windsor.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127868 and for economic injury is 127878.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23566 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12780 and #12781]

New Jersey Disaster Number NJ–00023

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4021–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/27/2011 and continuing.

DATES: *Effective Date:* 09/04/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New Jersey, dated 08/31/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Burlington, Hudson, Mercer, Ocean, Union.

All contiguous counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23578 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12754 and #12755]

Iowa Disaster Number IA–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–1998–DR), dated 08/22/2011.

Incident: Flooding.

Incident Period: 05/25/2011 through 08/01/2011.

DATES: *Effective Date:* 09/02/2011.

Physical Loan Application Deadline Date: 10/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/22/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Iowa, dated 08/22/2011, is hereby amended to establish the incident period for this disaster as beginning 05/25/2011 and continuing through 08/01/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23584 Filed 9–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Interagency Task Force Meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the fourth public meeting of the Interagency Task Force on Veterans Small Business Development. The meeting will be open to the public.

DATES: Friday, September 23, 2011, from 9 a.m. to 12 noon in the Eisenhower Conference Room, which is located on the 2nd floor.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development. The Task Force is established pursuant to Executive Order 13540 and focused on coordinating the efforts of Federal agencies to improve capital, business development opportunities and pre-established Federal contracting goals for small business concerns owned and controlled by veterans (VOB's) and service-disabled veterans (SDVOSB'S). Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to ''six focus areas'': (1) Access to capital (loans, surety bonding and franchising); (2) Ensure achievement of pre-established contracting goals, including mentor protégé and matching with contracting opportunities; (3) Increase the integrity of certifications of status as a small business; (4) Reducing paperwork and administrative burdens in accessing business development and entrepreneurship opportunities; (5) Increasing and improving training and counseling services; and (6) Making other improvements to support veteran's business development by the Federal government.

The Interagency Task Force on Veterans Small Business Development shall submit to the President, no later than one year after its first meeting, a report on the performance of its functions and any proposals developed pursuant to the ''six focus areas'' identified above. The purpose of the meeting is scheduled as a full Task Force meeting and will present and discuss the ''Draft'' Report to the President. In addition, the Task Force will allow time to obtain public comment from individuals and representatives of organizations regarding the areas of focus.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Task Force must contact Raymond B. Snyder, by September 20, 2011, by e-mail to be placed on the agenda. Comments for the Record should be applicable to the ''six focus areas'' of the Task Force and emailed prior to the meeting for inclusion in the public record, verbal presentations; however, will be limited to five minutes in the interest of time and to accommodate as many presenters as possible. Written comments should be e-mailed to Raymond B. Snyder, Deputy Associate Administrator, Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, at the e-mail address for the Task Force, *vetstaskforce@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Raymond B. Snyder, Designated Federal Official for the Task Force, at (202) 205–6773; or by e-mail at: *raymond.snyder@sba.gov*, SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416. For more information, please visit our Web site at *http://www.sba.gov/vets*.

Dated: September 7, 2011.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2011–23421 Filed 9–13–11; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/72–0618 issued to Radius Venture Partners II, L.P., and said license is hereby declared null and void.

United States Small Business Administration.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–23559 Filed 9–13–11; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small business Investment Company License No. 04/04–0279 issued to Blue Ridge Investor II, L.P., and said license is hereby declared null and void.

United States Small Business Administration.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–23552 Filed 9–13–11; 8:45 am]

BILLING CODE

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small business Investment Company License No. 01/71–0367 issued to Imprimis SB, L.P., and said license is hereby declared null and void.

United States Small Business Administration.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–23555 Filed 9–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 7583]

Culturally Significant Objects Imported for Exhibition Determinations: ''Caravaggio and His Followers in Rome''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of

October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Caravaggio and His Followers in Rome,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, from on or about October 16, 2011, until on or about January 8, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 8, 2011.

Lee A. Satterfield,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–23546 Filed 9–13–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7584]

Culturally Significant Objects Imported for Exhibition Determinations: ''Degas and the Nude''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Degas and the Nude,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, Massachusetts, from on or about October 9, 2011, until on or about February 5, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 8, 2011.

Lee A. Satterfield,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–23545 Filed 9–13–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7586]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Electronic Commerce

The Department of State, Office of Legal Adviser, Office of Private International Law would like to give notice of a public meeting to discuss the future work of Working Group IV (international electronic commerce) of the United Nations Commission on International Trade Law (UNCITRAL). Working Group IV will next meet October 10–14, 2011, and will undertake work in the field of electronic transferable records. Electronic records that are transferable may be used to transfer rights by computer or otherwise electronically, provided that applicable rules so permit. The Working Group is expected to focus on such rules and, in so doing, may address related aspects of electronic commerce.

The report of the Forty-fourth session of UNCITRAL describes the future work of Group IV. That report, document A/66/17, may be accessed via the UNCITRAL Web site (*http://www.uncitral.org*). The proposed agenda for the October meeting is available at *http://www.uncitral.org/uncitral/en/commission/working_groups/4Electronic_Commerce.html.*

Time and Place: The public meeting will take place on Friday, September 30, 2011, from 10 a.m. to 12 p.m. EDT at the Office of the Assistant Legal Adviser for Private International Law, U.S. Department of State, Washington, DC. Participants attending in person should arrive by 9:45 a.m. at the C Street gate to Navy Hill, corner of C Street, NW., and 23rd Street, NW. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to the meeting building is controlled. Persons wishing to attend in person or telephonically should contact both Trisha Smeltzer (*SmeltzerTK@state.gov*) and Niesha Toms (*TomsNN@state.gov*) of the Office of the Assistant Legal Adviser for Private International Law. If you would like to participate in person or telephonically, please provide your name, affiliation, e-mail address, and mailing address. If you would like to participate in person, please also provide your date of birth, citizenship, and driver's license or passport number for entry in the building. Members of the public who are not pre-cleared might encounter delays with security procedures. Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information. A member of the public needing reasonable accommodation should advise either of the aforementioned contacts not later than September 20, 2011.

Dated: September 8, 2011.

Michael S. Coffee,

Attorney-Adviser, Office of Private International Law.

[FR Doc. 2011–23667 Filed 9–13–11; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 7585]

Bureau of Economic, Energy and Business Affairs; Persons on Whom Sanctions Have Been Imposed Under the Iran Sanctions Act of 1996

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Secretary of State has determined that the following persons have engaged in sanctionable activity described in section 5(a) of the Iran Sanctions Act of 1996 (Pub. L. 104–172) (50 U.S.C. 1701 note) (''ISA''), as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) (''CISADA''), and that certain sanctions should be imposed as a result: Allvale Maritime Inc., Associated Shipbroking, Petrochemical Commercial Company International, Petróleos de Venezuela S.A., Royal Oyster Group, Société Anonyme Monégasque D'Administration Maritime Et Aérienne, Speedy Ship, and Tanker Pacific Management (Singapore) Pte. Ltd.

DATES: *Effective Date:* The sanctions on Associated Shipbroking, Petrochemical Commercial Company International, Petróleos de Venezuela S.A., Royal Oyster Group, Speedy Ship, and Tanker Pacific Management (Singapore) Pte. Ltd. are effective May 24, 2011. The sanctions on Allvale Maritime Inc. and Société Anonyme Monégasque D'Administration Maritime Et Aérienne, a clarification of the sanctions announced for ''Ofer Brothers Group'' in a May 24, 2011 announcement from the Department of State, are effective August 26, 2011.

FOR FURTHER INFORMATION CONTACT: On general issues: Norman Galimba, Office of Terrorism Finance and Economic Sanctions Policy, Department of State, Telephone: (202) 647–9183. For U.S. Government procurement ban issues: Daniel Walt, Office of the Procurement Executive, Department of State, Telephone: (703) 516–1696.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated to the Secretary of State in the Presidential Memorandum of September 23, 2010, 75 FR 67025 (the ''Delegation Memorandum''), the Secretary has determined that the following persons have engaged in sanctionable activity described in section 5(a) of the ISA, as amended by the CISADA: Allvale Maritime Inc., Associated Shipbroking, Petrochemical Commercial Company International, Petróleos de Venezuela S.A., Royal Oyster Group, Société Anonyme Monégasque D'Administration Maritime Et Aérienne, Speedy Ship, and Tanker Pacific Management (Singapore) Pte. Ltd. Société Anonyme Monégasque D'Administration Maritime Et Aérienne and Allvale Maritime Inc. are a corporate manager and a ship owning company, respectively, for the Ofer international shipping group, referred to as the ''Ofer Brothers Group'' in a May 24, 2011 announcement from the U.S. Department of State.

Pursuant to section 5(a) of the ISA and the Delegation Memorandum, the Secretary determined to impose on Allvale Maritime Inc. the following sanctions described in section 6 of the ISA:

1. *Export-Import Bank assistance for exports to sanctioned persons.* The Export-Import Bank of the United States shall not give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to Allvale Maritime Inc.

2. *Export sanction.* The United States Government shall not issue any specific license and shall not grant any other specific permission or authority to export any goods or technology to Allvale Maritime Inc. under—

a. The Export Administration Act of 1979 (50 U.S.C. Appx. 2401 *et seq.*);

b. The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);

c. The Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); or

d. Any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

3. *Loans from United States financial institutions.* United States financial institutions shall be prohibited from making loans or providing credits to Allvale Maritime Inc. totaling more than $10,000,000 in any 12-month period unless Allvale Maritime Inc. is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

These sanctions apply with respect to Allvale Maritime Inc. and not to any subsidiary, affiliate, or shareholder thereof unless separately identified.

Pursuant to section 5(a) of the ISA and the Delegation Memorandum, the Secretary determined to impose on Associated Shipbroking (a.k.a. SAM) the following sanctions described in section 6 of the ISA:

1. *Foreign exchange.* Any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Associated Shipbroking has any interest shall be prohibited.

2. *Banking transactions.* Any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Associated Shipbroking, shall be prohibited.

3. *Property transactions.* It shall be prohibited to:

a. Acquire, hold, withhold, use, transfer, withdraw, transport, import, or export any property that is subject to the jurisdiction of the United States and with respect to which Associated Shipbroking has any interest;

b. Deal in or exercise any right, power, or privilege with respect to such property; or

c. Conduct any transaction involving such property.

Based on the sanctions imposed on Associated Shipbroking, these prohibitions also apply with respect to any person in which Associated Shipbroking has an interest of fifty percent or more.

Pursuant to section 5(a) of the ISA and the Delegation Memorandum, the Secretary determined to impose on Petrochemical Commercial Company International (a.k.a. PCCI) the following sanctions described in section 6 of the ISA:

1. *Foreign exchange.* Any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Petrochemical Commercial Company International has any interest shall be prohibited.

2. *Banking transactions.* Any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Petrochemical Commercial Company International, shall be prohibited.

3. *Property transactions.* It shall be prohibited to:

a. Acquire, hold, withhold, use, transfer, withdraw, transport, import, or export any property that is subject to the jurisdiction of the United States and with respect to which Petrochemical Commercial Company International has any interest;

b. Deal in or exercise any right, power, or privilege with respect to such property; or

c. Conduct any transaction involving such property.

Based on the sanctions imposed on Petrochemical Commercial Company International, these prohibitions also apply with respect to any person in which Petrochemical Commercial

Company International has an interest of fifty percent or more.

Pursuant to section 5(a) of the ISA and the Delegation Memorandum, the Secretary determined to impose on Petróleos de Venezuela S.A. the following sanctions described in section 6 of the ISA:

1. *Export-Import Bank assistance for exports to sanctioned persons.* The Export-Import Bank of the United States shall not give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to Petróleos de Venezuela S.A.

2. *Export sanction.* The United States Government shall not issue any specific license and shall not grant any other specific permission or authority to export any goods or technology to Petróleos de Venezuela S.A. under—

a. The Export Administration Act of 1979 (50 U.S.C. Appx. 2401 *et seq.*);

b. The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);

c. The Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); or

d. Any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

3. *Procurement sanction.* The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from Petróleos de Venezuela S.A.

These sanctions apply with respect to Petróleos de Venezuela S.A. and not to any subsidiary, affiliate, or shareholder thereof unless separately identified.

Pursuant to section 5(a) of the ISA and the Delegation Memorandum, the Secretary determined to impose on Royal Oyster Group the following sanctions described in section 6 of the ISA:

1. *Foreign exchange.* Any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Royal Oyster Group has any interest shall be prohibited.

2. *Banking transactions.* Any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Royal Oyster Group, shall be prohibited.

3. *Property transactions.* It shall be prohibited to:

a. Acquire, hold, withhold, use, transfer, withdraw, transport, import, or export any property that is subject to the jurisdiction of the United States and with respect to which Royal Oyster Group has any interest;

b. deal in or exercise any right, power, or privilege with respect to such property; or

c. conduct any transaction involving such property.

Based on the sanctions imposed on Royal Oyster Group, these prohibitions also apply with respect to any person in which Royal Oyster Group has an interest of fifty percent or more.

Pursuant to section 5(a) of the ISA and the Delegation Memorandum, the Secretary determined to impose on Société Anonyme Monégasque D'Administration Maritime Et Aérienne (a.k.a. S.A.M.A.M.A., a.k.a. SAMAMA) the following sanctions described in section 6 of the ISA:

1. *Export-Import Bank assistance for exports to sanctioned persons.* The Export-Import Bank of the United States shall not give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to Société Anonyme Monégasque D'Administration Maritime Et Aérienne.

2. *Export sanction.* The United States Government shall not issue any specific license and shall not grant any other specific permission or authority to export any goods or technology to Société Anonyme Monégasque D'Administration Maritime Et Aérienne under—

a. The Export Administration Act of 1979 (50 U.S.C. Appx. 2401 *et seq.*);

b. The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);

c. The Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); or

d. Any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

3. Loans from United States financial institutions. United States financial institutions shall be prohibited from making loans or providing credits to Société Anonyme Monégasque D'Administration Maritime Et Aérienne totaling more than $10,000,000 in any 12-month period unless Société Anonyme Monégasque D'Administration Maritime Et Aérienne is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

These sanctions apply with respect to Société Anonyme Monégasque D'Administration Maritime Et Aérienne and not to any subsidiary, affiliate, or shareholder thereof unless separately identified.

Pursuant to section 5(a) of the ISA and the Delegation Memorandum, the Secretary determined to impose on Speedy Ship (a.k.a SPD) the following sanctions described in section 6 of the ISA:

1. *Foreign exchange.* Any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Speedy Ship has any interest shall be prohibited.

2. *Banking transactions.* Any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Speedy Ship, shall be prohibited.

3. Property transactions. It shall be prohibited to:

a. Acquire, hold, withhold, use, transfer, withdraw, transport, import, or export any property that is subject to the jurisdiction of the United States and with respect to which Speedy Ship has any interest;

b. deal in or exercise any right, power, or privilege with respect to such property; or

c. conduct any transaction involving such property.

Based on the sanctions imposed on Speedy Ship, these prohibitions also apply with respect to any person in which Speedy Ship has an interest of fifty percent or more.

Pursuant to section 5(a) of the ISA and the Delegation Memorandum, the Secretary determined to impose on Tanker Pacific Management (Singapore) Pte. Ltd. the following sanctions described in section 6 of the ISA:

1. *Export-Import Bank assistance for exports to sanctioned persons.* The Export-Import Bank of the United States shall not give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to Tanker Pacific Management (Singapore) Pte. Ltd.

2. Export sanction. The United States Government shall not issue any specific license and shall not grant any other specific permission or authority to export any goods or technology to Tanker Pacific Management (Singapore) Pte. Ltd. under—

a. The Export Administration Act of 1979 (50 U.S.C. Appx. 2401 *et seq.*);

b. The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);

c. The Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); or

d. Any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

3. Loans from United States financial institutions. United States financial institutions shall be prohibited from

making loans or providing credits to Tanker Pacific Management (Singapore) Pte. Ltd. totaling more than $10,000,000 in any 12-month period unless Tanker Pacific Management (Singapore) Pte. Ltd. is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

These sanctions apply with respect to Tanker Pacific Management (Singapore) Pte. Ltd. and not to any subsidiary, affiliate, or shareholder thereof unless separately identified.

The sanctions described above with respect to each of the persons listed shall remain in effect until otherwise directed pursuant to the provisions of the ISA or other applicable authority. Pursuant to the authority delegated to the Secretary of State in the Delegation Memorandum, relevant agencies and instrumentalities of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this notice. The Secretary of the Treasury is taking appropriate action to implement the sanctions for which authority has been delegated to the Secretary of the Treasury pursuant to the Delegation Memorandum and Executive Order 13574 of May 23, 2011.

The following constitutes a current, as of this date, list of persons on whom sanctions are imposed under the ISA. The particular sanctions imposed on an individual company are identified in the relevant **Federal Register** Notice.

—Allvale Maritime Inc.;

—Associated Shipbroking (a.k.a. SAM);

—Belarusneft (see Public Notice 7408, 76 FR 18821, April 5, 2011);

—Naftiran Intertrade Company (see Public Notice 7197, 75 Fed. Reg. 62916, Oct. 13, 2010).

—Petrochemical Commercial Company International (a.k.a. PCCI);

—Petróleos de Venezuela S.A.;

—Royal Oyster Group;

—Société Anonyme Monégasque D'Administration Maritime Et Aérienne (a.k.a. S.A.M.A.M.A., a.k.a. SAMAMA);

—Speedy Ship (a.k.a. SPD);

—Tanker Pacific Management (Singapore) Pte. Ltd.

Dated: September 6, 2011.

Jose Fernandez,

Assistant Secretary of State for Economic, Energy and Business Affairs.

[FR Doc. 2011–23541 Filed 9–13–11; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for O'Hare International Airport, John F. Kennedy International Airport, and Newark Liberty International Airport for the Summer 2012 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of October 13, 2011, for Summer 2012 flight schedules at Chicago's O'Hare International Airport (ORD), New York's John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Slot Guidelines. The deadline coincides with the schedule submission deadline for the IATA Schedules Conference for the Summer 2012 scheduling season.

SUPPLEMENTARY INFORMATION: The FAA has designated ORD as an IATA Level 2 airport, JFK as a Level 3 airport, and EWR as a Level 3 airport. Scheduled operations at JFK and EWR are currently limited by FAA Orders until a final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89) becomes effective but not later than October 26, 2013.[1]

The FAA is primarily concerned about planned passenger and cargo operations during peak hours, but carriers may submit schedule plans for the entire day. At ORD, the peak hours are 0700 to 2100 Central Time (1200–0200 UTC) and at EWR and JFK from 0600 to 2300 Eastern Time (1000–0300 UTC). Carriers should submit schedule information in sufficient detail including, at minimum, the operating carrier, flight number, scheduled time of operation, frequency, and effective dates. IATA standard schedule information format and data elements (Standard Schedules Information Manual) may be used.

The U.S. summer scheduling season for these airports is from March 25, 2012, through October 27, 2012, in recognition of the IATA scheduling season dates. The FAA understands there may be differences in schedule times due to different U.S. daylight saving time dates, and the FAA will accommodate these to the extent possible.

DATES: Schedules must be submitted no later than October 13, 2011.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–200, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; *facsimile:* 202–267–7277; or by e-mail to: *7-AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone number:* 202–267–7143; *fax number:* 202–267–7971; *e-mail: rob.hawks@faa.gov.*

Issued in Washington, DC, on September 9, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2011–23514 Filed 9–13–11; 8:45 am]

BILLING CODE 4910–13–P

[1] Operating Limitations at John F. Kennedy International Airport, 73 FR 3510 (Jan. 18, 2008) as amended 76 FR 18620 (Apr. 4, 2011); Operating Limitations at Newark Liberty International Airport, 73 FR 29550 (May 21, 2008) as amended 76 FR 18618 (Apr. 4, 2011).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2011–0097]

Pilot Project on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces and requests public comment on data and information concerning the Pre-Authorization Safety Audits (PASAs) for motor carriers that have applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' and all subsequent appropriations.

DATES: Comments must be received on or before September 26, 2011.

ADDRESSES: You may submit comments identified by FDMS Docket Number

FMCSA–2011–0097 using any one 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 (DOT), 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

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

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, FMCSA, North American Borders Division, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Telephone (512) 916–5440 Ext. 228; e-mail *marcelo.perez@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), [Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007]. Section 6901 of the Act requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

On July 8, 2011, FMCSA announced in the **Federal Register** [76 FR 40420] its intent to proceed with the initiation of a U.S.-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as detailed in the Agency's April 13, 2011, **Federal Register** notice [76 FR 20807]. The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the Act. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the July 8, 2011, notice and considered all comments received on or before May 13, 2011, in response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011.

In accordance with section 6901(b)(2)(B)(i) of the Act, FMCSA is required to publish in the **Federal Register**, and provide sufficient opportunity for public notice and comment, comprehensive data and information on the PASAs conducted of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. This notice serves to fulfill this requirement.

FMCSA is publishing for public comment the data and information relating to one PASA that was completed on August 25, 2011. FMCSA announces that the Mexico-domiciled motor carrier in Table 1 successfully completed its PASA. Notice of this completion was also published in the FMCSA Register.

Tables 2, 3 and 4 ''Successful Pre-Authorization Safety Audit (PASA) Information'' set out additional information on the carrier noted in Table 1. A narrative description of each column in the tables is provided as follows:

A. *Row Number in the Appendix for the Specific Carrier:* The row number for each line in the tables.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the long-haul pilot program.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the motor carrier's power units. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number for those vehicles approved to participate in the pilot program.

D. *PASA Initiated:* The date the PASA was initiated.

E. *PASA Completed:* The date the PASA was completed.

F. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office supervisor of the auditor assigned to conduct the PASA and by the FMCSA Service Center New Entrant Specialist designated for the specific FMCSA Division Office. This dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA's Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

G. *FMCSA Register:* The date FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (*e.g.,* MX–123456);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

H. *U.S. Drivers:* The total number of the motor carrier's drivers approved for long-haul transportation in the United States beyond the border commercial zones.

I. *U.S. Vehicles:* The total number of the motor carrier's power units approved for long-haul transportation in the United States beyond the border commercial zones.

J. *Passed Verification 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify the ability to obtain financial responsibility as required by 49 CFR 387, including the ability to obtain insurance in the United States;

d. Verify records of periodic vehicle inspections; and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor and English language proficiency.

K. *If No, Which Element Failed:* If FMCSA cannot verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) cannot be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item J above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

L. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

M. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

N. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

O. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

P. *Passed Phase 1, Factor 5:* A ''yes'' in this column indicates the carrier has successfully met Factor 5, which includes the hazardous material requirements outlined in parts 171 (General Information, Regulations, and Definitions), 177 (Carriage by Public Highway), 180 (Continuing Qualification and Maintenance of Packagings) and 397 (Transportation of Hazardous Materials; driving and parking rules).

Q. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in: a fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

R. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones and that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all power units to be used by the motor carrier in the pilot program and applied a current Commercial Vehicle Safety Alliance (CVSA) inspection decal. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection decal as a result of a passed inspection.

S. *Number U.S. Vehicles Issued CVSA Decal:* The total number of inspected vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a CVSA inspection decal as a result of an inspection during the PASA.

T. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier that has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

U. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier who has successfully completed the PASA.

TABLE 1

Row number in Tables 2, 3 and 4 of the Appendix to today's notice	Name of carrier	USDOT No.
1	TRANSPORTES OLYMPIC SA DE CV	555188

To date, no carriers have failed the PASA. Although failure to successfully complete the PASA precludes the carrier from being granted authority to participate in the long-haul pilot program, and the Act only requires publication of data for carriers receiving operating authority, FMCSA will publish this information to show motor carriers that failed to meet U.S. safety standards.

Request for Comments

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: September 9, 2011.

Alais Griffin,

Chief Counsel.

APPENDIX

Table 2: Successful Pre-Authorization Safety Audit (PASA) Information as of September 9, 2011 (see also Tables 3 and 4)

Column A - Row Number	Column B - Name of Carrier	Column C - US DOT Number	Column D - PASA Initiated	Column E - PASA Completed	Column F - PASA Results	Column G - FMCSA Register	Column H - US Drivers	Column I - US Vehicles
1	Transportes Olympic SA de CV	555188	8/25/2011	8/25/2011	Pass	9/9/2011	2	2

Table 3: Successful Pre-Authorization Safety Audit (PASA) Information as of September 9, 2011 (see also Tables 2 and 4)

Column A - Row Number	Column B - Name of Carrier	Column C - US DOT Number	Column J - Passed Verification 5 Elements (Yes/No)	Column K - If No, Which Element Failed	Column L - Passed Phase 1 Factor 1	Column M - Passed Phase 1 Factor 2	Column N - Passed Phase 1 Factor 3	Column O - Passed Phase 1 Factor 4
1	Transportes Olympic SA de CV	555188	Yes		Pass	Pass	Pass	Pass

Table 4: Successful Pre-Authorization Safety Audit (PASA) Information as of September 9, 2011 (see also Tables 2 and 3)

Column A - Row Number	Column B - Name of Carrier	Column C - US DOT Number	Column P - Passed Phase I Factor 5	Column Q - Passed Phase I Factor 6	Column R - Number US Vehicles Inspected	Column S - Number US Vehicles Issued CVSA Decal	Column T - Controlled Substance Collection	Column U - Name of Controlled Substances and Alcohol Collection Facility
1	Transportes Olympic SA de CV	555188	N/A	Pass	2	2	U.S.	Qwest Diagnostics

[FR Doc. 2011–23521 Filed 9–13–11; 8:45 am]
BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0223; Notice No. 11–9]

Information Collection Activities

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on certain information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before November 14, 2011.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2010–0223) 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 Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov.* Note that comments received will be posted without change to: *http://www.regulations.gov* including any personal information provided.

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Testing, Inspection, and Marking Requirements for Cylinders.

OMB Control Number: 2137–0022.

Summary: Requirements in § 173.301 for qualification, maintenance and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information collection requirements address registration of retesters and marking of cylinders by retesters with their identification number and retest date following the completion of required tests. Records showing the results of inspections and retests must be kept by the cylinder owner or designated agent until expiration of the retest period or until the cylinder is re-inspected or retested, whichever occurs first. These requirements are intended to ensure that retesters have the qualifications to perform tests and to identify to cylinder fillers and users that cylinders are qualified for continuing use. Information collection requirements in § 173.303 require that fillers of acetylene cylinders keep, for at least 30 days, a daily record of the representative pressure to which cylinders are filled.

Affected Public: Fillers, owners, users and retesters of reusable cylinders.

Recordkeeping:

Number of Respondents: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours: 171,642.

Frequency of collection: On occasion.

Title: Hazardous Materials Security Plans.

OMB Control Number: 2137–0612.

Summary: To assure public safety, shippers and carriers must take reasonable measures to plan and implement procedures to prevent unauthorized persons from taking control of, or attacking, hazardous materials shipments. Part 172 of the HMR requires persons who offer or transport certain hazardous materials to develop and implement written plans to enhance the security of hazardous materials shipments. The security plan requirement applies to shipments of: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in hazard zone A; (4) a shipment of hazardous materials in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases, or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) a shipment that requires placarding; and (6) select agents. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately. A security plan will enable shippers and carriers to reduce the possibility that a hazardous materials shipment will be used as a weapon of opportunity by a terrorist or criminal.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Recordkeeping:

Number of Respondents: 54,999.

Total Annual Responses: 44,880.

Total Annual Burden Hours: 372,064.

Frequency of collection: On occasion.

Title: Subsidiary Hazard Class and Number/Type of Packagings.

OMB Control Number: 2137–0613.

Summary: The HMR require that shipping papers and emergency response information accompany each shipment of hazardous materials in

commerce. In addition to the basic shipping description information, we also require the subsidiary hazard class or subsidiary division number(s) to be entered in parentheses following the primary hazard class or division number on shipping papers. This requirement was originally required only by transportation by vessel. However, the lack of such a requirement posed problems for motor carriers with regard to complying with segregation, separation, and placarding requirements, as well as posing a safety hazard. For example, in the event the motor vehicle becomes involved in an accident, when the hazardous materials being transported include a subsidiary hazard such as ''dangerous when wet'' or a subsidiary hazard requiring more stringent requirements than the primary hazard, there is no indication of the subsidiary hazards on the shipping papers and no indication of the subsidiary risks on placards. Under circumstances such as motor vehicles being loaded at a dock, labels are not enough to alert hazardous materials employees loading the vehicles, nor are they enough to alert emergency responders of the subsidiary risks contained on the vehicles. Therefore, we require the subsidiary hazard class or subsidiary division number(s) to be entered on the shipping paper, for purposes of enhancing safety and international harmonization.

We also require the number and type of packagings to be indicated on the shipping paper. This requirement makes it mandatory for shippers to indicate on shipping papers the numbers and types of packages, such as drums, boxes, jerricans, etc., being used to transport hazardous materials by all modes of transportation.

Shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the DOT shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies. The additional information would aid emergency responders by more clearly identifying the hazard.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Recordkeeping:

Number of Respondents: 250,000.

Total Annual Responses: 6,337,500.

Total Annual Burden Hours: 17,604 .

Frequency of collection: On occasion.

Dated: September 8, 2011.

T. Glenn Foster,

Acting Director, Standards and Rulemaking Division.

[FR Doc. 2011–23457 Filed 9–13–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35550]

American Railroad Group Transportation Services, LLC d/b/a ARG Trans—Continuance in Control Exemption—Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link

American Railroad Group Transportation Services, LLC d/b/a ARG Trans (ARG Trans), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link (CBR), upon CBR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 35551, *Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link—Operation Exemption—Oregon International Port of Coos Bay,* wherein CBR seeks Board approval to operate approximately 133 miles of railroad in Oregon currently owned by the Oregon International Port of Coos Bay.

ARG Trans states that it currently owns 100% of the stock of San Pedro Railroad Operating Company, LLC, d/b/a San Pedro & Southwestern Railroad (SPROC), an existing Class III rail carrier operating in the state of Arizona.

The parties intend to consummate the transaction on or around October 1, 2011, after the exemption becomes effective on September 28, 2011 (30 days after the notice of exemption was filed).

ARG Trans represents that: (1) The rail line to be operated by CBR will not connect with those of SPROC; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or with any other railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than September 21, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35550, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1750 K St., NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 9, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–23475 Filed 9–13–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35551]

Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link—Operation Exemption—Line of Railroad Owned by the Oregon International Port of Coos Bay

Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link (CBR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate 2 segments of railroad totaling approximately 133 miles of rail line owned by Oregon International Port of Coos Bay (the Port). The segments consist of: (1) A rail line extending between milepost 652.114 at Danebo, Or., and milepost 763.13 at Cordes, Or. (Coos Bay Line) and (2) a rail line extending between the junction with the Coos Bay Line at milepost 761.13 at Cordes, and milepost 785.5 at Coquille, Or. (Coquille Branch).

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 35550, *American Railroad Group Transportation Services, LLC d/b/a ARG Trans—Continuance in Control Exemption—Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link,* wherein American Railroad Group Transportation Services, LLC, CBR's corporate parent, seeks Board approval to continue in control of CBR, upon CBR's becoming a Class III rail carrier.

According to CBR, the transaction is expected to be consummated on or about October 1, 2011, after the September 28, 2011 effective date of the notice (30 days after the notice of exemption was filed).

CBR certifies that its projected annual revenues will not exceed $5 million and as a result of this transaction will not result in its becoming a Class II or Class I rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than September 21, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35551, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1750 K St., NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 9, 2011.

By the Board.

Rachel D. Campbell.

Director, Office of Proceedings.

[FR Doc. 2011–23495 Filed 9–13–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35546]

CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company, Pennsylvania Northeastern Railroad, LLC, and Southeastern Pennsylvania Transportation Authority

Pursuant to a Supplemental Agreement dated August 9, 2011,[1] CSX Transportation, Inc. (CSXT) is obtaining, retaining and/or modifying trackage rights from three separate sources, totaling 41.28 miles in Pennsylvania, as follows: (A) Norfolk Southern Railway Company (NSR) has agreed to assign its local and overhead trackage rights to CSXT over the Stony Creek Branch between milepost QAC 5.0 at Belfrey and milepost QAC 9.9 at Elm, a distance of 4.9 miles; (B) CSXT has retained overhead trackage rights as a result of the transfer of certain rights to Pennsylvania Northeastern Railroad, LLC (PNR) [2] for the purpose of interchanging with PNR on the following lines: (1) A portion of the Bethlehem Branch between milepost QAJ 7.0 at Tabor and milepost QAJ 24.4 at Lansdale (including Lansdale Yard between milepost QAJ 24.4 and milepost QAJ 24.8), (2) a portion of the Ninth Street Branch between milepost QAJ 6.7 at Newtown Jct. and milepost QAJ 7.0 at Tabor (formerly known as part of the Bethlehem Branch), (3) the New York Line between milepost QAA 10.8 at Jenkin (also known as Jenkintown) and milepost QAA 21.1 at Neshaminy (also known as Neshaminy Falls), and (4) the Stony Creek Branch between milepost QAC 0.0 at Lansdale and milepost QAC 3.0 near West Point, a total distance of 31.0 miles (31.4 miles including Lansdale Yard); and (C) CSXT's trackage rights over Southeastern Pennsylvania Transportation Authority (SEPTA) lines have been modified as follows: (1) Overhead and local trackage rights on the Stony Creek Branch between milepost QAC 3.0 near West Point and milepost QAC 5.0 at Belfrey, (2) overhead trackage rights on the Blue Line Branch (Blue Line Connecting Track), between milepost 0.0 at Nice and milepost 0.7 at Wayne, (3) overhead trackage rights on a portion of the Ninth Street Branch between milepost QA 5.1 at Wayne and milepost QAJ 6.7 at Newton Jct., and (4) overhead trackage rights on a portion of the Norristown Branch between milepost 17.3 at Kalb and milepost 17.98 at Elm, a distance of 4.98 miles. SEPTA owns all of the real estate and track involved in these transactions.

The purpose of the trackage rights is for CSXT to acquire the Stony Creek Branch from NSR in order to interchange with PNR and provide overhead and local service over the line as needed. CSXT has retained the overhead trackage rights over PNR in order to interchange traffic with PNR at the most efficient locations. CSXT's trackage rights over SEPTA continue the local and overhead service provided by Consolidated Rail Corporation (Conrail) since the real estate and track were transferred from Conrail to SEPTA, with Conrail retaining an operating easement and trackage rights.

The proposed transaction is scheduled to be consummated on or after September 28, 2011, the effective date of the exemption (30 days after the exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by September 21, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35546, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

[1] A copy of the Supplemental Agreement was submitted with the notice of exemption. The agreement modifies a series of agreements among and between CSX Corporation/CSX Transportation, Inc. (CSX, CSXT), Norfolk Southern Corporation/Norfolk Southern Railway Company (NSC, NSR), Consolidated Rail Corporation (Conrail) and Southeastern Pennsylvania Transportation Authority (SEPTA) initially stemming from *CSX Corp. et al.—Control—Conrail, Inc. et al.,* 3 S.T.B. 196 (1998).

[2] *See Pennsylvania Northeastern Railroad, LLC—Acq. & Op. Exemp.—CSX Transp., Inc.,* Docket No. FD 35535 (STB served July 22, 2011).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 9, 2011.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–23526 Filed 9–13–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Proposed Collections; Comment Requests

AGENCY: Departmental Offices; U.S. Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on the revision of an information collection that is proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form D, Report of Holdings of, and Transactions in, Financial Derivatives Contracts with Foreign Residents.

DATES: Written comments should be received on or before November 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*comments2TIC@treasury.gov*), Fax (202–622–2009) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms webpage, *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms.aspx.* Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form D, Report of Holdings of, and Transactions in, Financial Derivatives Contracts with Foreign Residents.

OMB Control Number: 1505–0199.

Abstract: Form D is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128) for the purpose of providing timely information on international capital movements other than direct investment by U.S. persons. Form D is a quarterly report used to cover holdings and transactions in derivatives contracts undertaken between foreign resident counterparties and major U.S.-resident participants in derivatives markets. This information is necessary for compiling the U.S. balance of payments accounts and international investment position, and for formulating U.S. international financial and monetary policies.

Current Actions: (a) The deadline for submitting the Form D report is shortened from 60 days to 50 days. The instructions, in section I.F, will read: ''Form D reports should be submitted not later than 50 calendar days following the report's as-of date, which is the last day of the calendar quarter being reported.'' The change in the reporting deadline will allow the U.S. to meet international data reporting standards. That is, at present, the U.S. is able to report on time all elements of its balance of payments accounts and its international investment position collected by the TIC reporting system except for its data on derivatives. This shortening of the reporting deadline should be feasible given data reporters' experience in completing the report since it was introduced in March 2005. (b) In part 1 of Form D, the title of row 2.a is changed to *Forwards and Foreign Exchange Swaps* from *Forwards* and row 2.b will be entitled *Currency Swaps* in place of *Swaps.* The purpose of this change is to clarify where Foreign Exchange Swaps should be reported. There is no change in reporting requirements. For example, the current instructions for row 2.b describe currency swaps, not foreign exchange swaps. (c) These changes are effective beginning with the reports as of March 31, 2012.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for profit organizations. Form D (1505–0199).

Estimated Number of Respondents: 35.

Estimated Average Time per Respondent: Thirty (30) hours per respondent per filing. Estimated Total Annual Burden Hours: 4,200 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Form D is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 2011–23586 Filed 9–13–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of four individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the identified four of individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on September 8, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On September 8, 2011, the Director of OFAC designated four individuals whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

The list of additional designees is as follows:

1. ALCALA CORDONES, Cliver Antonio; DOB 21 Nov 1961; Cedula No. 6097211 (Venezuela); Major General of the Fourth Armored Division of the Venezuelan Army (individual) [SDNTK]
2. BERNAL ROSALES, Freddy Alirio; DOB 16 Jun 1962; POB San Cristobal, Tachira State, Venezuela; Cedula No. 5665018 (Venezuela); Passport B0500324 (Venezuela); Congressman, United Socialist Party of Venezuela (individual) [SDNTK]
3. FIGUEROA SALAZAR, Amilcar Jesus (a.k.a. ''TINO''); DOB 10 Jul 1954; POB El Pilar, Sucre State, Venezuela; Cedula No. 3946770 (Venezuela); Passport 31–2006 (Venezuela); Alternate President to the Latin American Parliament (individual) [SDNTK]
4. MADRIZ MORENO, Ramon Isidro (a.k.a. ''AMIN''); DOB 4 Apr 1957; Cedula No. 6435192 (Venezuela); Officer, Venezuelan Intelligence Service-SEBIN (individual) [SDNTK]

Dated: September 8, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–23528 Filed 9–13–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789 and 9789(SP)

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 Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789 and 9789(SP), Electronic Federal Tax Payment System (EFTPS).

DATES: Written comments should be received on or before November 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Joel Goldberger, (202) 927–9368, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Electronic Federal Tax Payment System (EFTPS).

OMB Number: 1545–1467.

Form Number: Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789 and 9789(SP).

Abstract: These forms are used by business and individual taxpayers to enroll in the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system the Service uses to accept electronically transmitted federal tax payments. EFTPS (1) establishes and maintains a taxpayer data base which includes entity information from the taxpayers or their banks, (2) initiates the transfer of the tax payment amount from the taxpayer's bank account, (3) validates the entity information and selected elements for each taxpayer, and (4) electronically transmits taxpayer payment data to the IRS.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and state, local or tribal governments.

Estimated Number of Respondents: 4,470,000.

Estimated Total Annual Burden Hours: 766,446.

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. Comments will be of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including 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: September 6, 2011.

Joel Goldberger,

IRS Tax Analyst.

[FR Doc. 2011–23454 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for a Notice

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to interest rates and appropriate foreign loss payment patterns for determining the qualified insurance income of certain controlled corporations.

DATES: Written comments should be received on or before November 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the internet at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Interest Rates and Appropriate Foreign Loss Payment Patterns for Determining the Qualified Insurance Income of Certain Controlled Corporations under Section 954(j).

OMB Number: 1545–1799.

Notice Number: Notice 2002–69.

Abstract: Notice 2002–69 allows U.S. shareholders of a foreign insurance company to use the foreign insurance company's historical loss payment patterns in computing the company's insurance reserves provided the company has a certain number of years of data and makes an election to use that data. A domestic insurance company can elect to use its own historical data in computing its reserves provided certain requirements are satisfied and an election is made. This notice allows a foreign insurance company to elect to calculate its insurance reserves in a manner similar to a domestic insurance company. Also, this notice provides guidance on how to determine a foreign insurance company's foreign loss payment patterns.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 300.

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: September 1, 2011.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2011–23456 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13013, and 13013–D

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 13013, Taxpayer Advocacy Panel (TAP) Membership Application, and Form 13013–D, Taxpayer Advocacy Panel Tax Check Waiver.

DATES: Written comments should be received on or before November 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to, Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Joel Goldberger, (202) 927–9368, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Titles: Taxpayer Advocacy Panel (TAP) Membership Application; Taxpayer Advocacy Panel Tax Check Waiver.

OMB Number: 1545–1788.

Form Numbers: 13013, 13013–D.

Abstract: Form 13013, Taxpayer Advocacy Panel (TAP) Membership Application, is used as an application to volunteer to serve on the Taxpayer Advocacy Panel (TAP), an advisory panel to the Internal Revenue Service. The TAP application is necessary for the purpose of recruiting perspective members to voluntarily participate on the Taxpayer Advocacy Panel for the Internal Revenue Service. It is necessary

to gather information to rank applicants as well as to balance the panels demographically.

Abstract: Form 13013–D, Taxpayer Advocacy Panel Tax Check Waiver, is used by new and continuing members of IRS Advisory Committees/Councils who are required to undergo a tax compliance check as a condition of membership. The tax check wavier authorizes the Government Liaison Disclosure analysts to provide the results to the appropriate IRS officials.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 350.

Estimated Time per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 525.

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: September 2, 2011.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2011–23458 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–REIT.

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 1120–REIT, U.S. Income Tax Return for Real Estate Investment Trusts.

DATES: Written comments should be received on or before November 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet, *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Real Estate Investment Trusts.

OMB Number: 1545–1004.

Form Number: 1120–REIT.

Abstract: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income, and deductions, and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the income, deductions, credits, and tax liability have been correctly reported.

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.

Estimated Number of Responses: 1,136.

Estimated Total Annual Burden Hours: 142,203.

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: September 2, 2011.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2011–23455 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and

suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 11, 2011.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be held Tuesday, October 11, 2011, 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: September 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–23419 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 26, 2011.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee will be held Wednesday, October 26, 2011, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notifications of intent to participate must be made with Ms. Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the *Web site: http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–23451 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Marianne Dominguez at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Monday, October 24, 2011, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Ms. Dominguez at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–23459 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 6, 2011.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be held Thursday, October 6, 2011 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–23452 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 11, 2011.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, October 11, 2011, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the *Web site: http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: 09/06/2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–23446 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 27, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the *Federal Advisory Committee Act,* 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, October 27, 2011, 2 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–23437 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 27, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the *Federal Advisory Committee Act,* 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be held Thursday, October 27, 2011, at 9 a.m. Pacific Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–23443 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 25, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988)

that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be held Tuesday, October 25, 2011 at 2 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the *Web site: http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–23447 Filed 9–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held on September 20–21, 2011. On September 20, the Committee will conduct several site visits identified below. On September 21, the Committee will meet in the Yosemite McKinley Room at the Crown Plaza Hotel-Seattle, 1113 Sixth Avenue, Seattle, WA, from 8 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless Veterans. The Committee shall assemble and review information relating to the needs of homeless Veterans and provide on-going advice on the most appropriate means of providing assistance to homeless Veterans. The Committee will make recommendations to the Secretary regarding such activities.

On September 20, the Committee will have site visits at Catholic Housing Services of Western Washington, 7050 G Street, Tacoma, Washington; Washington State Veterans Home, 1141 Beach Drive East, Point Orchard, Washington; and 1811 Housing Project, 11564 Southeast State Highway 160, Southworth, Washington.

On September 21, the agenda will include briefings by ex-officio members; Veterans Health Administration; Veterans Benefits Administration; and Office of Asset Management. The Committee will also receive briefings on ways to increase permanent housing; improve housing stability and enhance discharge planning for homeless and at risk Veterans. The Committee will also receive updates and responses to Committee suggestions.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Mr. Pete Dougherty, Designated Federal Officer, Homeless Veterans Initiative Office (075D), Department of Veterans Affairs, 1722 Eye Street, NW., Washington, DC 20006, or e-mail to *Pete.Dougherty@va.gov.* Individuals who wish to attend the meeting should contact Mr. Dougherty at (202) 461–1857.

Dated: September 9, 2011.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2011–23494 Filed 9–13–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Agriculture

7 CFR Part 3201
Designation of Product Categories for Federal Procurement; Proposed Rule

DEPARTMENT OF AGRICULTURE

7 CFR Part 3201

RIN 0599–AA14

Designation of Product Categories for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add 13 sections that will designate the following product categories within which biobased products would be afforded Federal procurement preference: Air fresheners and deodorizers; asphalt and tar removers; asphalt restorers; blast media; candles and wax melts; electronic components cleaners; floor coverings (non-carpet); foot care products; furniture cleaners and protectors; inks; packaging and insulating materials; pneumatic equipment lubricants; and wood and concrete stains. USDA is also proposing minimum biobased contents for each of these product categories.

DATES: USDA will accept public comments on this proposed rule until November 14, 2011.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0599–AA14. Also, please identify submittals as pertaining to the ''Proposed Designation of Product Categories.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: biopreferred@usda.gov.* Include RIN number 0599–AA14 and ''Proposed Designation of Product Categories'' on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, *etc.*) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024; *e-mail: biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased products preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov*.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Today's Proposed Rule
IV. Designation of Product Categories, Minimum Biobased Contents, and Time Frame
  A. Background
  B. Product Categories Proposed for Designation
  C. Minimum Biobased Contents
  D. Compliance Date for Procurement Preference and Incorporation Into Specifications
V. Where can agencies get more information on these USDA-designated product categories?
VI. Regulatory Information
  A. Executive Order 12866: Regulatory Planning and Review
  B. Regulatory Flexibility Act (RFA)
  C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
  D. Executive Order 13132: Federalism
  E. Unfunded Mandates Reform Act of 1995
  F. Executive Order 12372: Intergovernmental Review of Federal Programs
  G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  H. Paperwork Reduction Act
  I. E-Government Act

I. Authority

The designation of these product categories is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

Section 9002 provides for the preferred procurement of biobased products by Federal procuring agencies and is referred to hereafter in this **Federal Register** notice as the ''Federal preferred procurement program.'' The definition of ''procuring agency'' in section 9002 includes both Federal agencies and ''a person that is a party to a contract with any Federal agency, with respect to work performed under such a contract.'' Thus, Federal contractors, as well as Federal agencies, are expressly subject to the procurement preference provisions of section 9002.

The term ''product category'' is used in the designation process to mean a generic grouping of specific products that perform a similar function, such as the various brands of foot care products or furniture cleaners. Once USDA designates a product category, procuring agencies are required generally to purchase biobased products within these designated product categories where the purchase price of the procurement product exceeds $10,000 or where the quantity of such products or the functionally equivalent products purchased over the preceding fiscal year equaled $10,000 or more. Procuring agencies must procure biobased products within each product category unless they determine that products within a product category are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in 7 CFR part 3201—''Guidelines for Designating Biobased Products for Federal Procurement'' (Guidelines), biobased products that are merely incidental to Federal funding are excluded from the Federal preferred procurement program; that is, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. In implementing the Federal preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability.

USDA recognizes that the performance needs for a given application are important criteria in making procurement decisions. USDA is not requiring procuring agencies to limit their choices to biobased products that fall under the product categories proposed for designation in this proposed rule. Rather, the effect of the designation of the product categories is to require procuring agencies to determine their performance needs, determine whether there are qualified biobased products that fall under the designated product categories that meet the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002.

Section 9002(a)(3)(B) requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such product categories and to recommend, where appropriate, the minimum level of biobased content to be contained in the procured products.

Subcategorization. Most of the product categories USDA is considering for designation for Federal preferred procurement cover a wide range of products. For some product categories, there are subgroups of products that meet different requirements, uses and/or different performance specifications. For example, within the product category ''hand cleaners and sanitizers,'' products that are used in medical offices may be required to meet performance specifications for sanitizing, while other products that are intended for general purpose hand washing may not need to meet these specifications. Where such subgroups exist, USDA intends to create subcategories. Thus, for example, for the product category ''hand cleaners and sanitizers,'' USDA determined that it was reasonable to create a ''hand cleaner'' subcategory and a ''hand sanitizer'' subcategory. Sanitizing specifications are applicable to the latter subcategory, but not the former. In sum, USDA looks at the products within each product category to evaluate whether there are groups of products within the category that have different characteristics or that meet different performance specifications and, where USDA finds these types of differences, it intends to create subcategories with the minimum biobased content based on the tested products within the subcategory.

For some product categories, however, USDA may not have sufficient information at the time of proposal to create subcategories. For example, USDA may know that there are different performance specifications that furniture cleaners and protectors are required to meet, but it may have information on only one type of furniture cleaner. In such instances, USDA may either designate the product category without creating subcategories (*i.e.,* defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the product category until additional information is obtained. Once USDA has received sufficient additional information to justify the designation of a subcategory, the subcategory will be designated through the proposed final rulemaking process.

Within today's proposed rule, USDA is proposing to subcategorize one of the product categories. That product category is inks and the proposed subcategories are: Specialty inks used to add extra characteristics or features to printed material; inks used for coated paper, paperboard, plastic, and foil (sheetfed—color and sheetfed—black); inks used in photocopying and laser machines (printer toner—<25 pages per minute (ppm) and printer toner—≥25 ppm); and inks used primarily in newsprint (news). In addition, public comments and additional data are being requested for several other product categories and subcategories may be created in a future rulemaking.

Minimum Biobased Contents. The minimum biobased contents being proposed with today's rule are based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples.

In addition to considering the biobased content test data for each product category, USDA also considers other factors including product performance information. USDA evaluates this information to determine whether some products that may have a lower biobased content also have unique performance or applicability attributes that would justify setting the minimum biobased content at a level that would include these products. For example, a lubricant product that has a lower biobased content than others within a product category but is formulated to perform over a wider temperature range than the other products may be more desirable to Federal agencies. Thus, it would be beneficial to set the minimum biobased content for the product category at a level that would include the product with superior performance features.

USDA also considers the overall range of the tested biobased contents within a product category, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. For example, the biobased contents of five tested products within a product category being proposed for designation today are 14, 46, 100, 100, and 100 percent. Because this is a very wide range, and because there is a significant gap in the data between the 46 percent biobased product and the 100 percent biobased products, USDA reviewed the product literature to determine whether subcategories could be created within this product category. USDA found that the available product information did not justify subcategorization. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on the 14 or 46 percent biobased content products. Thus, USDA is proposing to set the minimum biobased content for this product category based on the product with a tested biobased content of 100 percent. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each product category. For most designated product categories, USDA has biobased content test data on more than one product within the category. However, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated product category. As USDA obtains additional data on the biobased contents for products within these designated product categories or their subcategories, USDA will evaluate whether the minimum biobased content for a designated product category or subcategory will be revised.

USDA anticipates that the minimum biobased content of a product category that is based on a single product is more likely to change as additional products within that category are identified and tested. In today's proposed rule, the minimum biobased contents for the ''inks (printer toner—≥25 ppm)'' and the ''inks (news)'' subcategories of the inks product category are based on a single tested product within each subcategory. Based on discussions with industry stakeholders, USDA believes that the tested products are representative of other products within the subcategories, but has been unable to obtain additional products for testing. In addition to requesting comments on the appropriateness of the proposed minimum biobased contents for these subcategories, USDA requests that stakeholders provide biobased content data on their products.

Where USDA receives additional biobased content test data for products within these proposed product categories during the public comment period, USDA will take that information into consideration when establishing the minimum biobased content when the product categories are designated in the final rulemaking.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery

Act (RCRA) Section 6002. Some of the products that are within biobased product categories designated for Federal preferred procurement under this program may also be within categories the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for products containing recovered materials. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. Manufacturers are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains fossil energy-based components (including petroleum, coal, and natural gas) and whether the product contains recovered materials. Federal agencies also may review available information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the ASTM Standard D7075, ''Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products,'' or the Building for Environmental and Economic Sustainability (BEES) analysis for evaluating and reporting on environmental performance of biobased products). Federal agencies may then use this information to make purchasing decisions based on the sustainability features of the products. Detailed information on ASTM Standard D7075, and other ASTM standards, can be found on ASTM's Web site at *http://www.astm.org.* Information on the BEES analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html.*

Section 6002 of RCRA requires a procuring agency procuring a product designated by EPA generally to procure such a product composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such a product based on a determination that it fails to meet the reasonable performance standards or specifications of the procuring agency. A product with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the product with recovered materials content would jeopardize the intended end use of the product.

Where a biobased product is used for the same purposes and to meet the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because ''lubricating oils containing re-refined oil'' has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, ''lubricating oils containing re-refined oil.'' If, on the other hand, that biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to reasonable price, availability, and performance considerations.

This proposed rule designates three product categories for Federal preferred procurement for which there may be overlap with an EPA-designated recovered content product. The first is blast media, which may overlap with the EPA-designated recovered content product ''Miscellaneous products—blasting grit.'' The second is floor coverings (non-carpet), which may overlap with the EPA-designated recovered content product ''Floor tiles.'' The third is pneumatic equipment lubricants, which may overlap with the EPA-designated recovered content product ''Re-refined lubricating oils.'' EPA provides recovered materials content recommendations for these recovered content products in Recovered Materials Advisory Notice (RMAN) I. The RMAN recommendations for these CPG products can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

Federal Government Purchase of Sustainable Products. The Federal government's sustainable purchasing program includes the following three statutory preference programs for designated products: the BioPreferred Program, the EPA's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Procuring agencies should note that not all biobased products are ''environmentally preferable.'' For example, unless cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, and/or workers. Household cleaning products that are formulated to be disinfectants are required, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), to be registered with EPA and must meet specific labeling requirements warning of the potential risks associated with misuse of such products. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that the products have been reformulated in accordance with recommendations from the EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkyl phenol ethoxylates, ethylene glycol, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

In contrast, some biobased products may be more environmentally preferable than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with EPA's DfE program. To fully compare products, one must look at the ''cradle-to-grave'' impacts of the manufacture, use, and disposal of products. Biobased products that will be available for Federal preferred procurement under this program have been assessed as to their ''cradle-to-grave'' impacts.

One consideration of a product's impact on the environment is whether (and to what degree) it introduces new fossil carbon into the atmosphere. Fossil carbon is derived from non-renewable sources (typically fossil fuels such as coal and oil), whereas renewable biomass carbon is derived from renewable sources (biomass). Qualifying biobased products offer the user the opportunity to manage the carbon cycle and reduce the introduction of new fossil carbon into the atmosphere.

Manufacturers of qualifying biobased products designated under the Federal preferred procurement program will be able to provide, at the request of Federal agencies, factual information on environmental and human health effects of their products, including the results of the ASTM D7075, or the comparable BEES analysis, which examines 12 different environmental parameters, including human health. Therefore, USDA encourages Federal procurement agencies to consider that USDA has already examined all available information on the environmental and human health effects of biopreferred products when making their purchasing decisions.

Other Federal Preferred Procurement Programs. Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (*http://www.abilityone.gov*) indicated that four of the product categories being proposed today (air fresheners and deodorizers, blast media, floor coverings, and inks (printer toner—<25 ppm)) are available through the AbilityOne Program. While there is no specific product within these product categories identified in the AbilityOne online catalog as being a biobased product, it is possible that such biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other product categories being proposed for designation today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the Federal preferred procurement program.

Outreach. To augment its own research, USDA consults with industry and Federal stakeholders to the Federal preferred procurement program during the development of the rulemaking packages for the designation of product categories. USDA consults with stakeholders to gather information used in determining the order of product category designation and in identifying: Manufacturers producing and marketing products that fall within a product category proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

Future Designations. In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within product categories. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing. Based on these results, USDA will then propose new product categories for designation for Federal preferred procurement.

In the preamble to the first six product categories designated for Federal preferred procurement (71 FR 13686, March 16, 2006), USDA stated that it planned to identify approximately 10 product categories in each future rulemaking. In an effort to finalize the designation of more product categories in a shorter time period, USDA now plans to increase the number of product categories in each rulemaking, whenever possible. Thus, today's proposed rulemaking would designate 13 product categories for Federal preferred procurement.

USDA has developed a preliminary list of product categories for future designation and has posted this preliminary list on the BioPreferred Web site. While this list presents an initial prioritization of product categories for designation, USDA cannot identify with certainty which product categories will be presented in each of the future rulemakings. In response to comments from other Federal agencies, USDA intends to give increased priority to those product categories that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, product categories with high biobased content and for which sufficient technical information can be obtained quickly may be added or moved up on the prioritization list. USDA intends to update the list of product categories for future designation on the BioPreferred Web site every six months, or more often if significant changes are made to the list.

III. Summary of Today's Proposed Rule

USDA is proposing to designate the following product categories for Federal preferred procurement: Air fresheners and deodorizers; asphalt and tar removers; asphalt restorers; blast media; candles and wax melts; electronic components cleaners; floor coverings (non-carpet); foot care products; furniture cleaners and protectors; inks, including specialty inks, inks (sheetfed—color), inks (sheetfed—black), inks (printer toner—<25 ppm), inks (printer toner—≥25 ppm), and inks (news) as subcategories; packaging and insulating materials; pneumatic equipment lubricants; and wood and concrete stains. USDA is also proposing minimum biobased content for each of these product categories. Lastly, USDA is proposing a date by which Federal agencies must incorporate these designated product categories into their procurement specifications (see Section IV.D).

In today's proposed rule, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life-cycle costs for each of the designated product categories. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these product categories is not presented in this notice. Further, USDA has reached an understanding with manufacturers not to publish their names in conjunction with specific product data published in the **Federal Register** when designating product categories. This understanding was reached to encourage manufacturers to submit products for testing to support the designation of a product category. Once a product category has been designated, USDA will encourage the manufacturers of products within the product category to voluntarily make their names and other contact information available for the BioPreferred Web site.

Warranties. Some of the product categories being proposed for designation today may affect original equipment manufacturers (OEMs) warranties for equipment in which the product categories are used. For example, the manufacturer of a piece of equipment that requires lubrication typically includes a list of recommended lubricants in the owner/operators manual that accompanies the equipment when purchased. If the purchaser of the equipment uses a lubricant (including a biobased lubricant) that is not among the lubricants recommended by the equipment manufacturer, the manufacturer may cite that as a reason not to honor the warranty on the equipment. At this time, USDA does not

have information available as to the extent that OEMs have included, or will include, biobased products among their recommended lubricants (or other similar operating components). This does not necessarily mean that use of biobased products will void warranties, only that USDA does not currently have such information. USDA is requesting comments and information on this topic, but cannot be held responsible if damage were to occur. USDA encourages manufacturers of biobased products to test their products against all relevant standards, including those that affect warranties, and to work with OEMs to ensure that biobased products are accepted and recommended for use. Whenever manufacturers of biobased products find that existing performance standards for warranties are not relevant or appropriate for biobased products, USDA is willing to assist them in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. In addition to outreach to biobased product manufacturers and Federal agencies, USDA will, as time and resources allow, work with OEMs on addressing any effect the use of biobased products may have on their warranties. If, in spite of these efforts, there is insufficient information regarding the use of a biobased product and its effect on warranties, the procurement agent would not be required to buy such a product. As information is available on warranties, USDA will make such information available on the BioPreferred Web site.

Additional Information. USDA is working with manufacturers and vendors to make all relevant product and manufacturer contact information available on the BioPreferred Web site before a procuring agency asks for it, in order to make the Federal preferred procurement program more efficient. Steps USDA has implemented, or will implement, include: Making direct contact with submitting companies through e-mail and phone conversations to encourage completion of product listing; coordinating outreach efforts with intermediate material producers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal government to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these product categories through the following *Web site: http://www.biopreferred.gov.*

Comments. USDA invites comment on the proposed designation of these product categories, including the definition, proposed minimum biobased content, and any of the relevant analyses performed during the selection of these product categories. In addition, USDA invites comments and information in the following areas:

1. Three of the product categories being proposed for designation (blast media, floor coverings, and pneumatic equipment lubricants) may overlap with products designated under EPA's Comprehensive Procurement Guideline for products containing recovered material. To help procuring agencies in making their purchasing decisions between biobased products within the proposed designated product categories that overlap with products containing recovered material, USDA is requesting product-specific information on unique performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from products containing recovered material as well as non-biobased products.

2. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed product categories. If you know of other such standards or relevant measures of performance for any of the proposed product categories, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the standard/measure, and describing the circumstances under which the product is being used.

3. Many biobased products within the product categories being proposed for designation will have positive environmental and human health attributes. USDA is seeking comments on such attributes in order to provide additional information on the BioPreferred Web site. This information will then be available to Federal procuring agencies and will assist them in making informed sustainable procurement decisions. When possible, please provide appropriate documentation to support the environmental and human health attributes you describe.

4. Several product categories (*e.g.,* air fresheners and deodorizers, electronic components cleaners, floor coverings, inks, and wood and concrete stains) have wide ranges of tested biobased contents. For the reasons discussed later in this preamble, USDA is proposing a minimum biobased content that would allow many of the tested products to be eligible for Federal preferred procurement. USDA welcomes comments on the appropriateness of the proposed minimum biobased contents for these product categories and whether there are potential subcategories within the product categories that should be considered.

5. As discussed above, the effect that the use of biobased products may have on original equipment manufacturers' warranties is uncertain. USDA requests comments and supporting information on any aspect of this issue.

6. Today's proposed rule is expected to have both positive and negative impacts on individual businesses, including small businesses. USDA anticipates that the biobased Federal preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. Because USDA has been unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule, USDA requests comment on how many small entities may be affected by this rule and on the nature and extent of that effect.

All comments should be submitted as directed in the **ADDRESSES** section above.

To assist you in developing your comments, the background information used in proposing these product categories for designation has been assembled in a technical support document (TSD), ''Technical Support for Proposed Rule—Round 8 Designated Product Categories,'' which is available on the BioPreferred Web site. The TSD document can be located by clicking on the ''Federal Procurement Preference'' link on the right side of the BioPreferred Web site's home page (*http://www.biopreferred.gov*) and then on the ''Rules and Regulations'' link. At the next screen, click on the Supporting Documentation link under Round 8

Designation under the Proposed Regulations section.

IV. Designation of Product Categories, Minimum Biobased Contents, and Time Frame

A. Background

In order for USDA to designate product categories for Federal preferred procurement, section 9002 requires USDA to consider: (1) The availability of biobased products within the product categories and (2) the economic and technological feasibility of using those products, including the life-cycle costs of the products.

In considering an item's availability, USDA uses several sources of information. USDA performs Internet searches, contacts trade associations (such as the Bio organization) and commodity groups, searches the Thomas Register (a database, used as a resource for finding companies and products manufactured in North America, containing over 173,000 entries), and contacts manufacturers and vendors to identify those manufacturers and vendors with biobased products within product categories being considered for designation. USDA uses the results of these same searches to determine if an item is generally available.

In considering a product category's economic and technological feasibility, USDA examines evidence pointing to the general commercial use of a product and its life-cycle cost and performance characteristics. This information is obtained from the sources used to assess a product's availability. Commercial use, in turn, is evidenced by any manufacturer and vendor information on the availability, relative prices, and performance of their products as well as by evidence of a product being purchased by a procuring agency or other entity, where available. In sum, USDA considers a product category economically and technologically feasible for purposes of designation if products within that product category are being offered and used in the marketplace.

In considering the life-cycle costs of product categories proposed for designation, USDA has obtained the necessary input information (on a voluntary basis) from manufacturers of biobased products and has used the BEES analytical tool to analyze individual products within each proposed product category. The BEES analytical tool measures the environmental performance and the economic performance of a product. The environmental performance scores, impact values, and economic performance results for products within the Round 8 designated product categories analyzed using the BEES analytical tool can be found in ''Technical Support for Proposed Rule—Round 8 Designated Product Categories,'' located on the BioPreferred Web site (*http://www.biopreferred.gov*).

In addition to the BEES analytical tool, manufacturers wishing to make similar life-cycle information available may choose to use the ASTM Standard D7075 analysis. The ASTM Standard D7075 product analysis includes information on environmental performance, human health impacts, and economic performance. USDA is working with manufacturers and vendors to make this information available on the BioPreferred Web site in order to make the Federal preferred procurement program more efficient.

As discussed earlier, USDA has also implemented, or will implement, several other steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to make this information, including manufacturer contact information, available on the BioPreferred Web site in order to then make it available to procurement officials. Additional information on specific products within the product categories proposed for designation may also be obtained directly from the manufacturers of the products. USDA has also provided a link on the BioPreferred Web site to a document that offers useful information to manufacturers and vendors who wish to position their businesses as BioPreferred vendors to the Federal Government. This document can be accessed by clicking on the ''Sell Biobased Products'' tab on the right side of the home page of the BioPreferred Web site, then on the ''Resources for Business'' tab under ''Related Topics'' on the right side of the next page, and then on the document titled ''Selling Biobased Products to the Federal Government'' in the middle of the page.

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these products. USDA is gathering information on industry standard test methods and performance standards that manufacturers are using to evaluate the functional performance of their products. (Test methods are procedures used to provide information on a certain attribute of a product. For example, a test method might determine how many bacteria are killed. Performance standards identify the level at which a product must perform in order for it to be ''acceptable'' to the entity that set the performance standard. For example, a performance standard might require that a certain percentage (*e.g.,* 95 percent) of the bacteria must be killed through the use of the product.) The primary sources of information on these test methods and performance standards are manufacturers of biobased products within these product categories. Additional test methods and performance standards are also identified during meetings of the Interagency council and during the review process for each proposed rule. We have listed, under the detailed discussion of each product category proposed for designation (presented in Section IV.B), the functional performance test methods, performance standards, product certifications, and other measures of performance associated with the functional aspects of products identified during the development of this **Federal Register** notice for these product categories.

While this process identifies many of the relevant test methods and standards, USDA recognizes that those identified herein do not represent all of the methods and standards that may be applicable for a product category or for any individual product within the category. As noted earlier in this preamble, USDA is requesting identification of other relevant performance standards and measures of performance. As the program becomes fully implemented, these and other additional relevant performance standards will be available on the BioPreferred Web site.

In gathering information relevant to the analyses discussed above for this proposed rule, USDA has made extensive efforts to contact and request information and product samples within the product categories proposed for designation. For product information, USDA has attempted to contact representatives of the manufacturers of biobased products identified by the Federal preferred procurement program. For product samples on which to conduct biobased content tests and BEES analysis, USDA has attempted to obtain samples and BEES input information for at least five different suppliers of products within each product category in today's proposed rule. However, because the submission of information and samples is on a strictly voluntary basis, USDA was able to obtain information and samples only from those manufacturers who volunteered to invest the resources required to gather and submit the information and samples. The data

presented are all the data that were submitted in response to USDA requests for information from manufacturers of the products within the product categories proposed for designation. While USDA would prefer to have complete data on the full range of products within each product category, the data that were submitted support designation of the product categories in today's proposed rule.

To propose a product category for designation, USDA must have sufficient information on a sufficient number of products within the category to be able to assess its availability and its economic and technological feasibility, including its life-cycle costs. For some product categories, there may be numerous products available. For others, there may be very few products currently available. Given the infancy of the market for some product categories, it is expected that categories with only a single product will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate a product category or subcategory for Federal preferred procurement even when there is only a single product with a single supplier, though this will generally occur once other products with high biobased content and two or more producers are first designated. However, USDA has also determined that in such situations it is appropriate to defer the effective Federal preferred procurement date until such time that more than one supplier is identified in order to provide choice to procuring agencies. Similarly, the documented availability, benefits, and life-cycle costs of even a very small percentage of all products that may exist within a product category are also considered sufficient to support designation.

B. Product Categories Proposed for Designation

USDA uses a model (as summarized below) to identify and prioritize product categories for designation. Through this model, USDA has identified over 100 product categories for potential designation under the Federal preferred procurement program. A list of these product categories and information on the model can be accessed on the BioPreferred Web site at *http://www.biopreferred.gov*.

In general, product categories are developed and prioritized for designation by evaluating them against program criteria established by USDA and by gathering information from other government agencies, private industry groups, and manufacturers. These evaluations begin by looking at the cost, performance, and availability of products within each product category. USDA then considers the following points:

- Are there manufacturers interested in providing the necessary test information on products within a particular product category?
- Are there a number of manufacturers producing biobased products in this product category?
- Are there products available in this product category?
- What level of difficulty is expected when designating this item?
- Is there Federal demand for the product?
- Are Federal procurement personnel looking for biobased products?
- Will a product category create a high demand for biobased feed stock?
- Does manufacturing of products within this product category increase potential for rural development?

After completing this evaluation, USDA prioritizes the list of product categories for designation. USDA then gathers information on products within the highest priority product categories and, as sufficient information becomes available for a group of product categories, a new rulemaking package is developed to designate the product categories within that group. USDA points out that the list of product categories may change, with some being added or dropped, and that the order in which they are proposed for designation is likely to change because the information necessary to designate a product category may take more time to obtain than one lower on the list.

In today's proposed rule, USDA is proposing to designate the following product categories for the Federal preferred procurement program: Air fresheners and deodorizers; asphalt and tar removers; asphalt restorers; blast media; candles and wax melts; electronic components cleaners; floor coverings (non-carpet); foot care products; furniture cleaners and protectors; inks, including specialty inks, inks (sheetfed—color), inks (sheetfed—black), inks (printer toner—<25 ppm), inks (printer toner—≥25 ppm), and inks (news) as subcategories; packaging and insulating materials; pneumatic equipment lubricants; and wood and concrete stains. USDA has determined that each of these product categories meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products;
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

Further, USDA has sufficient information on these product categories to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life-cycle costs.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products. In today's proposed rule, three product categories may overlap with EPA-designated recovered content products. The first is blast media, which may overlap with the EPA-designated recovered content product ''Miscellaneous products—blasting grit.'' The second is floor coverings (non-carpet), which may overlap with the EPA-designated recovered content product ''Floor tiles.'' The third is pneumatic equipment lubricants, which may overlap with the EPA-designated recovered content product ''Re-refined lubricating oils.''

For these product categories, USDA is requesting information on overlap situations to further help procuring agencies make informed decisions when faced with purchasing a recovered content material product or a biobased product. As this information is developed, USDA will make it available on the BioPreferred Web site.

Exemptions. Products exempt from the biobased procurement preference are military equipment, defined as any product or system designed or procured for combat or combat-related missions, and spacecraft systems and launch support equipment. However, agencies may purchase biobased products wherever performance, availability and reasonable price indicates that such purchases are justified.

Although each product category in today's proposed rule would be exempt from the procurement preference requirement when used in spacecraft systems or launch support application or in military equipment used in combat and combat-related applications, this exemption does not extend to contractors performing work other than

direct maintenance and support of the spacecraft or launch support equipment or combat or combat-related missions. For example, if a contractor is applying furniture cleaners and protectors to the furniture in an office building on a military base, the furniture cleaners and protectors the contractor purchases and uses in the office building should be a qualifying biobased furniture cleaner and protector. The exemption does apply, however, if the product being purchased by the contractor is for use in combat or combat-related missions or for use in space or launch applications. After reviewing the regulatory requirement and the relevant contract, where contractors have any questions on the exemption, they should contact the cognizant contracting officer.

USDA points out that it is not the intent of these exemptions to imply that biobased products are inferior to non-biobased products. If manufacturers of biobased products can meet the concerns of these two agencies, USDA is willing to reconsider such exemptions on a case-by-case basis. Any changes to the current exemptions would be announced in a proposed rule amendment with an opportunity for public comment.

Each of the proposed designated product categories are discussed in the following sections.

1. Air Fresheners and Deodorizers (Minimum Biobased Content 97 Percent) [1]

Air fresheners and deodorizers are products used to alleviate the experience of unpleasant odors by chemical neutralization, absorption, anesthetization, or masking.

USDA identified 44 manufacturers and suppliers of 77 air fresheners and deodorizers. These 44 manufacturers and suppliers do not necessarily include all manufacturers of air fresheners and deodorizers, merely those identified during USDA information gathering activities. Relevant product information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified two test methods (as shown below) used in evaluating products within this product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the two test methods identified by the manufacturers are:

Test Methods

- Environmental Protection Agency (EPA), 40 CFR part 797.1300, Daphnid Acute Toxicity Test. Method used to determine the concentration of a substance that produces a toxic effect; and
- EPA, 40 CFR part 797.1400, Fish Acute Toxicity Test. Method used to determine the concentration of a substance that produces a toxic effect.

USDA contacted procurement officials with various policy-making and procuring agencies in an effort to gather information on the purchases of air fresheners and deodorizers, as well as information on products within the other 12 product categories proposed for designation today. These agencies included GSA, several offices within the DLA, OFEE, USDA Departmental Administration, the National Park Service, EPA, a Department of Energy laboratory, and OMB. Communications with these Federal officials led to the conclusion that obtaining current usage statistics and specific potential markets within the Federal government for biobased products within the 13 proposed designated product categories is not possible at this time.

Most of the contacted officials reported that procurement data are appropriately reported in higher level groupings of Federal Supply Codes [2] for materials and supplies, which is higher level coding than the proposed designated product categories. Using terms that best match the product categories in today's proposed rule, USDA queried the GSA database for Federal purchases of products within today's proposed product categories. The results indicate purchases of products within product categories in today's proposed rule. The results of this inquiry can be found in the TSD for this proposed rule. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally leads to less accurate data on purchases of specific products.

USDA also investigated the Web site *FEDBIZOPPS.gov,* a site which lists Federal contract purchase opportunities and awards greater than $25,000. The information provided on this Web site, however, is for broad categories of services and products rather than the specific types of products that are included in today's proposed rule. Therefore, USDA has been unable to obtain data on the amount of air fresheners and deodorizers purchased by procuring agencies. However, Federal agencies routinely procure such products and contract for lodging, cleaning, and health care related services involving the use of such products. Thus, they have a need for air fresheners and deodorizers and for services that use these products. Designation of air fresheners and deodorizers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on 14 air fresheners and deodorizers. Analyses of the environmental and human health benefits and the life-cycle costs of biobased air fresheners were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

2. Asphalt and Tar Removers (Minimum Biobased Content 80 Percent)

Asphalt and tar removers are products designed to remove asphalt or tar from equipment, roads, or various surfaces.

USDA identified 13 manufacturers and suppliers of 16 asphalt and tar removers. The 13 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased asphalt and tar removers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

[1] Additional information on the determination of minimum biobased contents is presented in Section IV.C of this preamble.

[2] The Federal Supply Code (FSC) is a four-digit code used by government buying offices to classify and identify, in broad terms, the products and supplies that the government buys and uses. The FSC is the first four digits in the much more detailed 13-digit National Stock Number (NSN) that is assigned to all government purchases for purposes of identification and inventory control.

USDA attempted to gather data on the potential market for asphalt and tar remover products within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, Federal agencies routinely procure such products and perform, or procure contract services to perform, the types of cleaning activities that would use these products. Thus, they have a need for asphalt and tar removers and for services that require the use of asphalt and tar removers. Designation of asphalt and tar removers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on eight asphalt and tar removers. Analyses of the environmental and human health benefits and the life-cycle costs of asphalt and tar removers were performed for two products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

3. Asphalt Restorers (Minimum Biobased Content 68 Percent)

Asphalt restorers are products designed to seal, protect, or restore poured asphalt and concrete surfaces and are typically applied through spraying immediately after pouring of concrete or asphalt.

USDA identified five manufacturers and suppliers of seven asphalt restorers. The five manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased asphalt restorers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified one test method (as shown below) used in evaluating products within this product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the one test method identified by the manufacturers is:

Test Method

- ASTM D2170—Standard Test Method for Kinematic Viscosity of Asphalts (Bitumens).

USDA attempted to gather data on the potential market for asphalt restorer products within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, the types of paving activities that would use these products. Thus, they have a need for asphalt restorers and for services that require the use of asphalt restorers. Designation of asphalt restorers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on five asphalt restorers. An analysis of the environmental and human health benefits and the life-cycle costs of asphalt restorers was performed for one product using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

4. Blast Media (Minimum Biobased Content 94 Percent)

Blast media are abrasive particles sprayed forcefully to clean, remove contaminants, or condition surfaces, often preceding coating.

USDA identified 7 manufacturers and suppliers of 13 different blast media. These seven manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased blast media, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified one test method (as shown below) used in evaluating products within this product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the one test method identified by the manufacturers is:

Test Method

- ASTM International D2240 Standard Test Method for Rubber Property—Durometer Hardness.

USDA attempted to gather data on the potential market for blast media within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely use blast media in cleaning and painting operations. In addition, Federal agencies may contract for services involving the use of such products. Thus, they have a need for blast media and for services that require the use of blast media. Designation of blast media will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 13 blast media products. Analyses of the environmental and human health benefits and the life-cycle costs of blast media were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

5. Candles and Wax Melts (Minimum Biobased Content 88 Percent)

Candles and wax melts are products that are in the form of a solid mass that either has an embedded wick that is burned to provide light or aroma, or is wickless and melts when heated to produce just aroma.

USDA identified 267 manufacturers and suppliers of 708 candles and wax melts. These 267 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased candles and wax melts, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified one test method (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the only test method identified by manufacturers is:

Test Method

- ASTM International F2417, Standard Specification for Fire Safety for Candles.

USDA attempted to gather data on the potential market for candles and wax melts within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely maintain, or procure contract services to maintain, residential facilities that use candles and wax melts. Thus, they have a need for these products. Designation of candles and wax melts will promote the use of

biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 85 candles and wax melts. Analyses of the environmental and human health benefits and the life-cycle costs of candles and wax melts were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

6. Electronic Components Cleaners (Minimum Biobased Content 91 Percent)

Electronic components cleaners are products used to wash or remove dirt or extraneous matter from electronic parts, devices, circuits, or systems.

USDA identified seven manufacturers and suppliers of eight electronic components cleaners. These seven manufacturers and suppliers do not necessarily include all manufacturers and suppliers of electronic components cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified one test method (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the only test method identified by manufacturers is:

Test Method

- ASTM International D86, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.

USDA attempted to gather data on the potential market for electronic components cleaners within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, most Federal agencies routinely procure electronic components cleaners, or procure services that use these products. Thus, they have a need for electronic components cleaners and for services that require the use of electronic components cleaners. Designation of electronic components cleaners will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on six electronic components cleaners. Analyses of the environmental and human health benefits and the life-cycle costs of biobased electronic components cleaners were performed for two products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

7. Floor Coverings (Non-Carpet) (Minimum Biobased Content 91 Percent)

Floor coverings that are designed for use as the top layer on a floor and that are not carpet products. Examples are bamboo, hardwood, and cork tiles.

USDA identified 38 manufacturers and suppliers of 343 floor coverings. These 38 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of floor coverings, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified one test method (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the only test method identified by manufacturers is:

Test Method

- ASTM E1333—Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.

USDA attempted to gather data on the potential market for floor coverings within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely procure floor coverings, or contract with services that procure these products. Thus, they have a need for floor coverings and for services that require the use of floor coverings. Designation of floor coverings will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 45 floor coverings. An analysis of the environmental and human health benefits and the life-cycle costs of biobased floor coverings was performed for one product using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

8. Foot Care Products (Minimum Biobased Content 83 Percent)

Foot care products are products used in the soothing or cleaning of feet.

USDA identified 36 manufacturers and suppliers of 62 foot care products. These 36 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of foot care products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified three test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the three test methods identified by manufacturers are:

Test Methods

- ASTM International E1207—Standard Practice for the Sensory Evaluation of Axillary Deodorancy;
- ASTM International E1909—Standard Guide for Time-Intensity Evaluation of Sensory Attributes; and
- ASTM International F2412—Standard Test Methods for Foot Protection.

USDA attempted to gather data on the potential market for foot care products within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, Federal agencies procure foot care products for use in medical care or similar types of facilities, or they procure the services that use these products. Thus, they have a need for foot care products and for services that require the use of foot care products. Designation of foot care products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended

use, biobased content, and performance characteristics have been collected on 13 foot care products. An analysis of the environmental and human health benefits and the life-cycle costs of biobased foot care products was performed for one product using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

9. Furniture Cleaners and Protectors (Minimum Biobased Content 77 Percent)

Furniture cleaners and protectors are cleaning agents designed to clean, protect, and increase the life of household furniture, not including upholstery.

USDA identified 24 manufacturers and suppliers of 36 furniture cleaner and protector products. These 24 manufacturers and suppliers do not necessarily include all manufacturers of furniture cleaners and protectors, merely those identified during USDA information gathering activities. Information supplied by the manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for furniture cleaners and protectors within the Federal government using the procedure described in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, Federal agencies routinely engage in operations where furniture cleaners and protectors are used. In addition, many Federal agencies contract for lodging and housekeeping activities involving the use of such products. Thus, they have a need for furniture cleaners and protectors and for services that use furniture cleaners and protectors. Designation of furniture cleaners and protectors will promote the use of biobased products, furthering the objectives of this program.

Specific product information including company contact, intended use, biobased content, and performance characteristics have been collected on eight furniture cleaners and protectors. Analyses of the environmental and human health benefits and the life-cycle costs of two products were performed using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

10. Inks (Minimum Biobased Content: 66 percent for Specialty Inks; 67 Percent for Inks (Sheetfed—Color); 49 Percent for Inks (Sheetfed—Black); 34 Percent for Inks (Printer Toner—< 25 ppm); 20 Percent for Inks (Printer Toner—≥ 25 ppm); and 32 Percent for Inks (News)

Specialty inks are products used by printers to add extra characteristics to their prints, for special effects or functions, including CD printing, erasable, PDA compliant, invisible, magnetic, OCR, RFID, scratch & sniff, thermochromic and tree-marking inks. Inks (sheetfed—color) and inks (sheetfed—black) are inks used on coated and uncoated paper, paperboard, some plastic and foil to print items such as annual reports, brochures, and labels. Inks (printer toner—< 25 ppm) and (printer toner—≥ 25 ppm) are a powdered chemical, used in photocopying machines and laser printers, which is transferred onto paper to form the printed image. These inks are usually stored in a cartridge which is placed in the printer. Inks (news) are inks used primarily to print newspapers.

USDA identified 11 manufacturers and suppliers of 31 different biobased specialty inks; 17 manufacturers of 53 biobased inks (sheetfed); 28 manufacturers and suppliers of 40 different biobased inks (printer toner); and 8 manufacturers and suppliers of 24 different biobased inks (news). These manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased inks, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for inks within the Federal government as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies perform printing operations, or procure services that perform printing operations, that use various types of inks. Thus, they have a need for inks and for services that require the use of inks. Designation of inks will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 67 inks. Analyses of the environmental and human health benefits and the life-cycle costs of biobased inks were performed for three inks using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

11. Packaging and Insulating Materials (Minimum Biobased Content 82 Percent)

Packaging and insulating materials are pre-formed or molded materials used to hold package contents in place during shipping or for insulating and sound-proofing applications. Examples include; packaging ''peanuts,'' foam packaging that is molded into specific shapes to surround electronic items, and material molded into sheets that are used as sound-proofing insulation for home theaters.

USDA identified 16 manufacturers of 23 biobased packaging and insulating material products. The 16 manufacturers do not necessarily include all manufacturers of biobased packaging and insulating materials, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 10 methods (as shown below) used in evaluating products within this product category. While other test methods and other measures of performance, as well as performance standards, applicable to

products within this product category may exist, those test methods and other measures of performance identified by manufacturers are:

Test Methods

- ASTM International D6400—Standard Specification for Compostable Plastics;
- ASTM International D4169—Standard Practice for Performance Testing of Shipping Containers and Systems;
- Military Specification MIL–P–1120b Cushioning material. Uncompressed bound fiber;
- Military Specification MIL–P–1120c Cushioning material. Uncompressed bound fiber (Metric measurements);
- ASTM C1338—Standard Test Method for Determining Fungi Resistance of Insulation Materials and Facings;
- ASTM D4168—Standard Test Methods for Transmitted Shock Characteristics of Foam-in-Place Cushioning Materials;
- ASTM D4236—Standard Practice for Labeling Art Materials for Chronic Health Hazards;
- ASTM D5338—Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions;
- ASTM D6868—Standard Specification for Biodegradable Plastics used as Coatings on Paper and Other Compostable Substrates; and
- ASTM D963—Specification for Copper Phthalcoyanine Blue Pigment.

USDA attempted to gather data on the potential market for packaging and insulating materials within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, most Federal agencies routinely use, and procure services that use packaging and insulating materials. Thus, they have a need for packaging and insulating materials and for services that require the use of these materials. Designation of packaging and insulating materials will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 15 packaging and insulating materials. An analysis of the environmental and human health benefits and the life-cycle costs of biobased packaging and insulating materials was performed for two products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

12. Pneumatic Equipment Lubricants (Minimum Biobased Content 67 Percent)

Lubricants designed specifically for pneumatic equipment including air compressors, vacuum pumps, in-line lubricators, rock drills, jackhammers, *etc.*

USDA identified 11 manufacturers and suppliers of 25 pneumatic equipment lubricants. These 11 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of pneumatic equipment lubricants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 20 test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the only test methods identified by manufacturers are:

Test Methods

- ASTM D130—Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test;
- ASTM D2266—Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four-Ball Method);
- ASTM D2270—Standard Practice for Calculating Viscosity Index From Kinematic Viscosity at 40 and 100°C;
- ASTM D2272—Standard Test Method for Oxidation Stability of Steam Turbine Oils by Rotating Pressure Vessel;
- ASTM D2619—Standard Test Method for Hydrolytic Stability of Hydraulic Fluids (Beverage Bottle Method);
- ASTM D287—Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method);
- ASTM D2982—Standard Test Methods for Detecting Glycol-Base Antifreeze in Used Lubricating Oils;
- ASTM D2983—Standard Test Method for Low-Temperature Viscosity of Lubricants Measured by Brookfield Viscometer;
- ASTM D445—Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity);
- ASTM D5864—Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;
- ASTM D5985—Standard Test Method for Pour Point of Petroleum Products (Rotational Method);
- ASTM D6400—Standard Specification for Compostable Plastics;
- ASTM D665—Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- ASTM D892—Standard Test Method for Foaming Characteristics of Lubricating Oils;
- ASTM D92—Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;
- ASTM D93—Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester;
- ASTM D97—Standard Test Method for Pour Point of Petroleum Products;
- ISO 32—Calibration in analytical chemistry and use of certified reference materials;
- ISO VG–46—Designates oil viscosity grade; and
- SAE 30—J3000 Engine Oil Viscosity Classification.

USDA attempted to gather data on the potential market for pneumatic equipment lubricants within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely procure pneumatic equipment lubricants, or contract with services that procure these products. Thus, they have a need for pneumatic equipment lubricants and for services that require the use of pneumatic equipment lubricants. Designation of pneumatic equipment lubricants will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 12 pneumatic equipment lubricants. Analyses of the environmental and human health benefits and the life-cycle costs of biobased pneumatic equipment lubricants were performed for two products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

13. Wood and Concrete Stains (Minimum Biobased Content 39 Percent)

A finish for concrete and wood surfaces that contains a dye or pigment

to change the color without concealing the grain pattern or surface texture.

USDA identified 15 manufacturers and suppliers of 48 wood and concrete stains. These 15 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of wood and concrete stains, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified two test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the test methods identified by manufacturers are:

Test Method

- GREENGUARD Indoor Air Quality Certified® standard for indoor air quality.
- DIN EN 71–3 ''Safety of Toys'' certified as suitable for use on toys.

USDA attempted to gather data on the potential market for wood and concrete stains within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely procure wood and concrete stains, or contract with services that procure these products. Thus, they have a need for wood and concrete stains and for services that require the use of wood and concrete stains. Designation of wood and concrete stains will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on three wood and concrete stains. An analysis of the environmental and human health benefits and the life-cycle costs of biobased wood and concrete stains was performed for one product using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

C. Minimum Biobased Contents

USDA has determined that setting a minimum biobased content for designated product categories is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimis biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the Federal preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content for a product category at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002.

As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers' voluntary submission of samples to support the proposed designation of these product categories. The data presented in the following paragraphs are the test results from all of the product samples that were submitted for analysis.

As a result of public comments received on the first designated product categories rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus, rather than establishing the minimum biobased content for a product category at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level three (3) percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

USDA encourages procuring agencies to seek products with the highest biobased content that is practicable in all of the proposed designated product categories. To assist the procuring agencies in determining which products have the highest biobased content, USDA will update the information in the biobased products catalog to include the biobased content of each product. Those products within each product category that have the highest biobased content will be listed first and others will be listed in descending order. USDA is specifically requesting comments on the proposed minimum biobased contents and also requests additional data that can be used to re-evaluate the appropriateness of the proposed minimum biobased contents. As the market for biobased products develops and USDA obtains additional biobased content data, it will re-evaluate the established minimum biobased contents of designated product categories and consider raising them whenever justified.

The following paragraphs summarize the information that USDA used to propose minimum biobased contents within each product category proposed for designation.

1. Air Fresheners and Deodorizers

Five of the 77 biobased air fresheners and deodorizers have been tested for biobased content using ASTM D6866.[3] The biobased contents of these five biobased air fresheners and deodorizers range from 14 to 100 percent, as follows: 14, 46, 100, 100, and 100. Because there is a wide range of tested biobased contents, and because there is a significant break between the values for the two products with the lowest biobased contents and the values for the three products with the highest biobased contents, USDA considered the need to subcategorize this product category. USDA found that there was not sufficient information on the performance or applicability of the products to justify subcategorization. USDA also found that the two products with the 14 and 46 percent biobased content did not claim to offer any unique performance or applicability features not offered by the products with 100 percent biobased content. Because we have data showing that at least three different products are available with a biobased content of 100 percent, we are proposing to set the minimum biobased content for air fresheners and deodorizers at 97 percent.

2. Asphalt and Tar Removers

Four of the 16 biobased asphalt and tar removers identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased asphalt and tar removers range from 83 percent to 94 percent, as follows: 83, 91, 93, and 94 percent. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for asphalt and tar removers at 80 percent, based on

[3] ASTM D6866, ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis,'' is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

the product with a tested biobased content of 83 percent.

3. Asphalt Restorers

Three of the seven biobased asphalt restorer products identified have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased asphalt restorer products range from 71 percent to 88 percent, as follows: 71, 88, and 88 percent. Because the biobased contents of these three products are relatively high and they are within a narrow range, USDA is proposing to set the minimum biobased content for asphalt restorers at 68 percent, based on the product with a tested biobased content of 71 percent.

4. Blast Media

Five of the 13 identified biobased blast media identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased blast media products are 97, 100, 100, 100, and 100 percent. Because the range of these values is very small and the biobased contents of all of the products are very high, USDA is proposing a minimum biobased content of 94 percent for blast media, based on the product with a tested biobased content of 97 percent.

5. Candles and Wax Melts

Nine of the 708 biobased candles and wax melts identified have been tested for biobased content using ASTM D6866. The biobased contents of these nine biobased candles and wax melts range from 91 percent to 100 percent as follows: 91, 91, 91, 92, 95, 96, 97, 100, and 100 percent. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for candles and wax melts at 88 percent, based on the three products with a tested biobased content of 91 percent.

6. Electronic Components Cleaners

Four of the eight biobased electronic components cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased electronic components cleaners range from 52 percent to 100 percent as follows: 52, 94, 98, and 100 percent. There is a significant break between the 52 percent biobased product and the 94 percent product, and USDA found no performance features claimed for the 54 percent product that justified setting the minimum biobased content based on that product. Because the biobased contents of the remaining three products are within a narrow range, USDA is proposing to set the minimum biobased content for electronic components cleaners at 91 percent, based on the product with a tested biobased content of 94 percent.

USDA will continue to gather information on products within this product category and, if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

7. Floor Coverings (Non-Carpet)

Five of the 343 biobased floor coverings (non-carpet) identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased floor coverings range from 9 percent to 100 percent, as follows: 9, 94, 95, 100, and 100.

There is a significant break between the 9 percent biobased product and the 94 percent product, and USDA found no performance features claimed for the 9 percent product that justified setting the minimum biobased content based on that product. Because the biobased contents of the remaining four products are within a narrow range, USDA is proposing to set the minimum biobased content for floor coverings (non-carpet) at 91 percent, based on the product with a tested biobased content of 94 percent.

USDA will continue to gather information on products within this product category and, if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

8. Foot Care Products

Five of the 62 biobased foot care products identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased foot care products range from 86 percent to 100 percent, as follows: 86, 95, 97, 97, and 100 percent. Because the biobased contents of these five products are relatively high and they are within a narrow range, USDA is proposing to set the minimum biobased content for foot care products at 83 percent, based on the product with a tested biobased content of 86 percent.

9. Furniture Cleaners and Protectors

Six of the 36 biobased furniture cleaners and protectors identified have been tested for biobased content using ASTM D6866. The biobased contents of these six biobased furniture cleaners and protectors range from 9 percent to 100 percent, as follows: 9, 28, 80, 91, 98, and 100.

There are two significant breaks in the range of data, one between the 9 and 28 percent biobased products and another between the 28 and 80 percent biobased products. Considering these breaks, the tested products within the product category fall into three groups (9 percent, 28 percent, and 80 through 100 percent). USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between these product groups to justify subcategorization. However, USDA did not find sufficient information to justify subcategories. USDA also did not find any features of the 9 or 28 percent biobased content products that would justify setting the minimum biobased content at a level that would include these products. Therefore, USDA is proposing to set the minimum biobased content for furniture cleaners and protectors at 77 percent, based on the product with the lowest biobased content of those products in the group of products with the highest tested biobased content.

USDA will continue to gather information on products within this product category and, if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

10. Inks

Nineteen of the 148 biobased inks identified have been tested for biobased content using ASTM D6866. As noted earlier in this preamble, USDA is proposing to subcategorize this product category into six subcategories: ''specialty inks,'' ''inks (sheetfed—color),'' ''inks (sheetfed—black),'' ''inks (printer toner—< 25 ppm),'' ''inks (printer toner—≥ 25 ppm),'' and ''inks (news).'' The following paragraphs discuss the minimum biobased content for the six subcategories.

Specialty inks. Six of the 31 biobased specialty inks identified have been tested for biobased content using ASTM D6866. The biobased contents of these six biobased specialty inks range from 69 to 85 percent, as follows: 69, 69, 71, 75, 78, and 85 percent. Because the biobased contents of the six tested products are within a narrow range, and there is no performance information to distinguish any one product from the others, USDA is proposing to set the minimum biobased content for this subcategory at 66 percent, based on the two products with a tested biobased content of 69 percent.

Inks (sheetfed—color). Four of the 53 biobased sheetfed inks tested for biobased content using ASTM D6866 have been identified as being color inks. The biobased contents of these four biobased inks range from 70 to 79

percent, as follows: 70, 71, 73, and 79 percent. Because this is a narrow range and even the lowest biobased content is a fairly high value, USDA is proposing to set the minimum biobased content for this subcategory at 67 percent, based on the product with the tested biobased content of 70 percent.

Inks (sheetfed—black). Five of the 53 biobased sheetfed inks tested for biobased content using ASTM D6866 have been identified as black inks. The biobased contents of these five biobased inks range from 52 to 75 percent, as follows: 52, 56, 60, 71, and 75 percent. Because three of the five products tested have a biobased content between 52 and 60 percent, USDA is proposing to set the minimum biobased content for this subcategory at 49 percent, based on the product with the tested biobased content of 52 percent.

Inks (printer toner—<25 ppm). Two of the 40 biobased inks (printer toner—<25 ppm) identified have been tested for biobased content using ASTM D6866. The biobased content of both of these biobased inks is 37 percent. Because the biobased content of these two products is the same, USDA is proposing to set the minimum biobased content for this subcategory at 34 percent based on these two tested products.

Inks (printer toner—≥ 25 ppm). One biobased ink (printer toner—≥25 ppm) has been tested for biobased content using ASTM D6866. The biobased content of this biobased ink is 23 percent. USDA believes that the one tested product is representative of biobased inks used in this subcategory and is proposing to set the minimum biobased content for this subcategory at 20 percent based on this one tested product.

Inks (news). One of the 24 biobased inks (news) identified has been tested for biobased content using ASTM D6866. The biobased content of the one biobased ink is 35 percent. USDA believes that the one tested product is representative of biobased inks used in this subcategory and is proposing to set the minimum biobased content for this subcategory at 32 percent based on this one tested product.

11. Packaging and Insulating Materials

Three of the 23 biobased packaging and insulating materials identified have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased packaging and insulating materials are 85, 91, and 100 percent. Because the biobased contents of the three tested products are within a narrow range and all three values are high, USDA is proposing to set the minimum biobased content for packaging and insulating materials at 82 percent, based on the product with a tested biobased content of 85 percent.

12. Pneumatic Equipment Lubricants

Five of the 25 biobased pneumatic equipment lubricants identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased pneumatic equipment lubricants range from 70 to 100 percent, as follows: 70, 79, 94, 96, and 100 percent. Because the biobased contents of the five tested products are within a fairly narrow range, all of the contents are relatively high, and there is no performance information to distinguish any one product from the others, USDA is proposing to set the minimum biobased content for pneumatic equipment lubricants at 67 percent, based on the product with a tested biobased content of 70 percent.

13. Wood and Concrete Stains

Four of the 48 biobased wood and concrete stains identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased wood and concrete stains range from 42 percent to 88 percent, as follows: 42, 57, 87, and 88.

There are two significant breaks in the range of data, one between the 42 and 57 percent biobased products and another between the 57 and 87 percent biobased products. USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between these products to justify subcategorization. USDA did not find sufficient information to support creating subcategories at this time. However, USDA did find that the 42 percent biobased content product has been certified as complying with the German Institute for Standardization's DIN EN 71–3 ''Safety of Toys.'' USDA believes that the ability of biobased wood stains to meet this standard, and to be used on toys and other products intended for human contact, is significant and justifies setting the minimum biobased content for this product category at a level that would include this product. Therefore, USDA is proposing to set the minimum biobased content for wood and concrete stains at 39 percent, based on the product with the tested biobased content of 42 percent.

USDA requests that stakeholders provide additional data and recommendations on the creation of subcategories for this product category. USDA will continue to gather and evaluate information on products within this product category and, if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

D. Compliance Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, as proposed, procuring agencies would have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated product category would take effect.

USDA is proposing a one-year period before the procurement preferences would take effect, because it recognizes that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Both section 9002(a)(3) and 7 CFR 3201(c) explicitly acknowledge the need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated product categories. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

By the time these product categories are promulgated for designation, Federal agencies will have had a minimum of 18 months (from the date of this **Federal Register** notice), and much longer considering when the Guidelines were first proposed and these requirements were first laid out, to implement these requirements.

For these reasons, USDA proposes that the mandatory preference for biobased products under the designated product categories take effect one year after promulgation of the final rule. The one-year period provides these agencies with ample time to evaluate the economic and technological feasibility of biobased products for a specific use and to revise the specifications accordingly. However, some agencies may be able to complete these processes more expeditiously, and not all uses will require extensive analysis or revision of existing specifications. Although it is allowing up to one year, USDA encourages procuring agencies to implement the procurement preferences as early as practicable for procurement

actions involving any of the designated product categories.

V. Where can agencies get more information on these USDA-designated product categories?

Information used to develop this proposed rule can be found in the TSD, which can be accessed on the BioPreferred Web site, which is located at: *http://www.biopreferred.gov*. At the BioPreferred Web site, click on the ''Federal Procurement Preference'' link on the right side of the page and then on the ''Rules and Regulations'' link. At the next screen, click on the Supporting Documentation link under Round 8 Designation Product Categories under the Proposed Regulations section.

Further, once the product category designations in today's proposal become final, manufacturers and vendors voluntarily may make available information on specific products, including product and contact information, for posting by the Agency on the BioPreferred Web site. USDA has begun performing periodic audits of the information displayed on the BioPreferred Web site and, where questions arise, is contacting the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

By accessing the BioPreferred Web site, agencies will also be able to search the BioPreferred Catalog and to obtain the voluntarily-posted information on each product concerning: Relative price; life-cycle costs; hot links directly to a manufacturer's or vendor's Web site (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and environmental and public health information from the BEES analysis or the alternative analysis embedded in the ASTM Standard D7075, ''Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products.''

VI. Regulatory information

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

Today's proposed rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with today's proposed rule. As discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage within the 13 designated product categories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing products within designated product categories if price is ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's proposed rule. Consideration was also given to the fact that agencies may choose not to procure products within designated product categories due to unreasonable price.

1. Summary of Impacts

Today's proposed rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased Federal preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule. The proposed rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Proposed Rule

The designation of these product categories provides the benefits outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these product categories.

3. Costs of the Proposed Rule

Like the benefits, the costs of today's proposed rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability and price reasonableness of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small

organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its proposed designation of these product categories to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal preferred procurement program established under section 9002 applies only to Federal agencies and their contractors, small governmental (city, county, *etc.*) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of product categories for Federal preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the product categories designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The Federal preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being proposed for designation for Federal preferred procurement in this rule are expected to be included under the following NAICS codes: 321918 (other millwork, including flooring), 324191 (petroleum lubricating oil and grease manufacturing), 325411 (medicinal and botanical manufacturing), 325510 (paint and coating manufacturing), 325612 (polish and other sanitation goods manufacturing), 325620 (toilet preparation manufacturing), 325910 (printing ink manufacturing), 325998 (other miscellaneous chemical products and preparation manufacturing), 326150 (urethane and other foam product manufacturing), and 313113 (thread mill products). USDA obtained information on these 10 NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 6,963 companies within these 10 NAICS categories and that these companies own a total of about 8,139 establishments. Thus, the average number of establishments per company is about 1.2. The Census data also reported that of the 8,139 individual establishments, about 8,096 (99.5 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 42, with none of the segments reporting an average of more than 100 employees per company. Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (fewer than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the product categories being designated, but believes that the impact will not be significant. Most of the product categories being proposed for designation in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the product categories being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased products when biobased products do not meet the availability, performance, or reasonable price criteria. This proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for those products containing biobased materials.

After considering the economic impacts of this proposed rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 13132: Federalism

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

E. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

F. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's proposed rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the

relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

H. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this proposed rule is currently approved under OMB control number 0503–0011.

I. E-Government Act

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each designated item. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR chapter XXXII as follows:

Chapter XXXII—Office of Procurement and Property Management

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Add §§ 3201.75 through 3201.87 to subpart B to read as follows:

Sec.

3201.75 Air fresheners and deodorizers.
3201.76 Asphalt and tar removers.
3201.77 Asphalt restorers.
3201.78 Blast media.
3201.79 Candles and wax melts.
3201.80 Electronic components cleaners.
3201.81 Floor coverings (non-carpet).
3201.82 Foot care products.
3201.83 Furniture cleaners and protectors.
3201.84 Inks.
3201.85 Packaging and insulating materials.
3201.86 Pneumatic equipment lubricants.
3201.87 Wood and concrete stains.

§ 3201.75 Air fresheners and deodorizers.

(a) *Definition.* Products used to alleviate the experience of unpleasant odors by chemical neutralization, absorption, anesthetization, or masking.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 97 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased air fresheners and deodorizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased air fresheners and deodorizers.

§ 3201.76 Asphalt and tar removers.

(a) *Definition.* Cleaning agents designed to remove asphalt or tar from equipment, roads, or other surfaces.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 80 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased asphalt and tar removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased asphalt and tar removers.

§ 3201.77 Asphalt restorers.

(a) *Definition.* Products designed to seal, protect, or restore poured asphalt and concrete surfaces.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 68 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased asphalt restorers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased asphalt restorers.

§ 3201.78 Blast media.

(a) *Definition.* Abrasive particles sprayed forcefully to clean, remove contaminants, or condition surfaces, often preceding coating.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 94 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased blast media. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased blast media.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Miscellaneous products—blasting grit. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated blasting grit products and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased blast media within this designated product category can compete with similar blasting grit products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated blasting grit products containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.79 Candles and wax melts.

(a) *Definition.* Products composed of a solid mass and either an embedded wick that is burned to provide light or aroma, or that are wickless and melt when heated to produce an aroma.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 88 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased candles and wax melts. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased candles and wax melts.

§ 3201.80 Electronic components cleaners.

(a) *Definition.* Products that are designed to wash or remove dirt or extraneous matter from electronic parts, devices, circuits, or systems.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 91 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased electronic components cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased electronic components cleaners.

§ 3201.81 Floor coverings (non-carpet).

(a) *Definition.* Products, other than carpet products, that are designed for use as the top layer on a floor. Examples are bamboo, hardwood, and cork tiles.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 91 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased floor coverings (non-carpet). By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased floor coverings (non-carpet).

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Construction Products—floor tiles. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated floor tile products and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased floor coverings within this designated product category can compete with similar floor tile products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated floor tile products containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.82 Foot care products.

(a) *Definition.* Products formulated to be used in the soothing or cleaning of feet.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 83 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased foot care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased foot care products.

§ 3201.83 Furniture cleaners and protectors.

(a) *Definition.* Products designed to clean and provide protection to the surfaces of household furniture other than the upholstery.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased furniture cleaners and protectors. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased furniture cleaners and protectors.

§ 3201.84 Inks.

(a) *Definitions.* (1) Inks are liquid or powdered materials that are available in several colors and that are used to create the visual image on a substrate when writing, printing, and copying.

(2) Inks for which Federal preferred procurement applies are:

(i) *Specialty inks.* Inks used by printers to add extra characteristics to their prints for special effects or functions. Specialty inks include, but are not limited to: CD printing, erasable, FDA compliant, invisible, magnetic, scratch and sniff, thermochromic, and tree marking inks.

(ii) *Inks (sheetfed—color).* Pigmented inks (other than black inks) used on coated and uncoated paper, paperboard, some plastic, and foil to print in color on annual reports, brochures, labels, and similar materials.

(iii) *Inks (sheetfed—black).* Black inks used on coated and uncoated paper, paperboard, some plastic, and foil to print in black on annual reports, brochures, labels, and similar materials.

(iv) *Inks (printer toner—< 25 pages per minute (ppm)).* Inks that are a powdered chemical, used in photocopying machines and laser printers, which is transferred onto paper

to form the printed image. These inks are formulated to be used in printers with standard fusing mechanisms and print speeds of less than 25 ppm.

(v) *Inks (printer toner—≥ 25 ppm).* Inks that are a powdered chemical, used in photocopying machines and laser printers, which is transferred onto paper to form the printed image. These inks are formulated to be used in printers with advanced fusing mechanisms and print speeds of 25 ppm or greater.

(vi) *Inks (news).* Inks used primarily to print newspapers.

(b) *Minimum biobased content.* The minimum biobased content for all inks shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the Federal preferred procurement products are:

(1) *Specialty inks*—66 percent.

(2) *Inks (sheetfed—color)*—67 percent.

(3) *Inks (sheetfed—black)*—49 percent.

(4) *Inks (printer toner—< 25 ppm)*—34 percent.

(5) *Inks (printer toner—≥ 25 ppm)*—20 percent.

(6) *Inks (news)*—32 percent.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased inks. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased inks.

§ 3201.85 Packaging and insulating materials.

(a) *Definition.* Pre-formed and molded materials that are used to hold package contents in place during shipping or for insulating and sound proofing applications.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 82 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased packaging and insulating materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased packaging and insulating materials.

§ 3201.86 Pneumatic equipment lubricants.

(a) *Definition.* Lubricants designed specifically for pneumatic equipment, including air compressors, vacuum pumps, in-line lubricators, rock drills, jackhammers, *etc.*

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 67 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased pneumatic equipment lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased pneumatic equipment lubricants.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Vehicular Products—re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oil products and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased pneumatic equipment lubricants within this designated product category can compete with similar re-refined lubricating oil products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oil products containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.87 Wood and concrete stains.

(a) *Definition.* Products that are designed to be applied as a finish for concrete and wood surfaces and that contain dyes or pigments to change the color without concealing the grain pattern or surface texture.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 39 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wood and concrete stains. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased wood and concrete stains.

Dated: September 2, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2011–23067 Filed 9–13–11; 8:45 am]

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Part III

Department of Energy

Western Area Power Administration

The Central Valley Project, the California-Oregon Transmission Project, the Pacific Alternating Current Intertie, and Information on the Path 15 Transmission Upgrade—Rate Order No. WAPA–156; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

The Central Valley Project, the California-Oregon Transmission Project, the Pacific Alternating Current Intertie, and Information on the Path 15 Transmission Upgrade—Rate Order No. WAPA–156

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–156 and Rate Schedules CV–F13, CPP–2, CV–T3, CV–NWT5, COTP–T3, PACI–T3, CV–TPT7, CV–UUP1, CV–SPR4, CV–SUR4, CV–RFS4, CV–EID4, and CV–GID1, placing formula rates for power, transmission, and ancillary services for the Central Valley Project (CVP), transmission service on the California-Oregon Transmission Project (COTP), transmission service on the Pacific Alternating Current Intertie (PACI), and third-party transmission service into effect on an interim basis. The Rate Order also provides information on the Western Area Power Administration's (Western) transmission capacity entitlement on the Path 15 Transmission Upgrade. The provisional formula rates will be in effect until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until superseded. The provisional formula rates will provide sufficient revenue to pay all annual costs, including interest expense, repayment of power investments and aid to irrigation, within the allowable periods.

DATES: Rate Schedules CV–F13, CPP–2, CV–T3, CV–NWT5, COTP–T3, PACI–T3, CV–TPT7, CV–UUP1, CV–SPR4, CV–SUR4, CV–RFS4, CV–EID4, and CV–GID1 will be placed into effect on an interim basis on the first day of the first full billing period beginning October 1, 2011, and will remain in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis for a 5-year period ending September 30, 2016, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas R. Boyko, Regional Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4418, or Ms. Regina Rieger, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4629, e-mail *rieger@wapa.gov.*

SUPPLEMENTARY INFORMATION: This **Federal Register** notice (FRN) replaces the existing formula rates for power, transmission, and ancillary services under Rate Order No. 115, noticed on November 22, 2004,[1] as amended under Rate Order No. 128, noticed on July 26, 2006,[2] and as extended by Rate Order No. 139, noticed on August 12, 2008.[3] These rate schedules (CV–F12, CPP–1, CV–T2, CV–NWT4, COTP–T2, PACI–T2, CV–TPT6, CV–SPR3, CV–SUR3, CV–RFS3, and CV–EID3) expire on September 30, 2011. The Deputy Secretary of Energy, under Delegation Order No. 00–037.00 and 00–001.00c, 10 CFR 903 and 18 CFR part 300, confirms, approves, and places into effect on October 1, 2011, on an interim basis, Rate Order WAPA–156, which includes rate schedules CV–F13, CPP–2, CV–T3, CV–NWT5, COTP–T3, PACI–T3, CV–TPT7, CV–UUP1, CV–SPR4, CV–SUR4, CV–RFS4, CV–EID4, and CV–GID1. The provisional formula rates shall be in effect until FERC confirms, approves, and places them into effect on a final basis through September 30, 2016, or until they are superseded.

Changes From Existing Rates

After considering all comments submitted during the public consultation and comment period, Western determined that the provisional rates should continue the existing formula rate methodologies for power; CVP, COTP, and PACI transmission; transmission of Western power by others; Custom Product Power (CPP); and ancillary services with the following summarized exceptions:

1. Two new rate schedules: Unreserved Use Penalties (UUP) and Generator Imbalance (GI);
2. Annual true-up for First Preference (FP) percentages;
3. In addition to the existing 150 percent penalty on the California Independent System Operator's (CAISO) market price, Western will adopt a 150 percent penalty on Western's actual cost when charging for ancillary services and will charge the greater of the two;
4. Costs incurred under Energy Imbalance (EI)/GI when disposing of surplus energy, including negative pricing of such energy, will be charged to the responsible party;
5. For intermittent resources interconnected to Western's system, Western will not charge the 150 percent penalty and will charge the greater of CAISO market price or Western's actual cost;
6. Western added Components 2 and 3, standard cost recovery language, to CPP formula rate; and
7. Rate Schedules include miscellaneous language changes and billing clarifications.

Detailed explanations of changes to the provisional formula rate methodologies are described in the rate order below.

Provisional Power Rates

Under the provisional formula rates, prior to the start of each fiscal year (FY), Western calculates and publishes an annual Power Revenue Requirement (PRR) to determine the total cost of power to be allocated to Preference Customers. As part of the rate development, Western prepares a Power Repayment Study (PRS) each FY to determine if the expected revenue will be sufficient to repay, within the required time periods, all costs assigned to the commercial power function. Repayment criteria are based on legislation and applicable policies, including DOE Order RA 6120.2. Generally, the PRR includes estimated operation and maintenance (O&M) expenses, purchase power for Project Use (PU) and FP Customers' loads, interest, and other expenses (including any other statutorily-required costs or charges), investment repayment, and the Washoe Project annual costs that remain after project use loads are met. Revenues from PU, transmission, ancillary services, and other services are offset against expenses in the PRR. The remainder is collected from Base Resource (BR) and FP Customers. The PRR is reviewed during March of each year; and if the review results in a change of $5 million or more, the PRR is adjusted. The PRR is an estimate of revenue and costs including investment and repayment projections from the PRS. Any deviation from estimate to actual will increase or decrease capital project repayment. Project repayment is analyzed and measured over the long term to ensure repayment is met and to maintain rate stability.

The PRR is allocated first to FP Customers then to BR Customers. The FP Customers are defined in the Trinity River Division Act of 1955[4] and the Flood Control Act of 1962.[5] Western provides first preference of CVP power to customers in Trinity, Tuolumne, and Calaveras Counties, as provided under those acts and as implemented under Western's 2004 Marketing Plan. A BR

[1] *See* 69 FR 70510 (2004).

[2] *See* 71 FR 45821 (2006).

[3] *See* 73 FR 48381 (2008).

[4] *See* 69 Stat. 719 (1955).

[5] *See* 76 Stat. 1173, 1191–1192 (1962).

Customer, under the 2004 Marketing Plan, is an entity that has executed a BR contract and is allocated a percentage of the BR. The FP percentages are reviewed during March of each year; and if the review results in a change of one-half of 1 percent for any FP Customer, the PRR obligation is reallocated to both FP and BR Customers. Based on customer comments received during this rate process, Western agreed to perform an annual true-up of FP percentages and adjust FP and BR revenue requirements each October.

In order for Western to meet the loads of Full Load Service (FLS) Customers or any portion of the loads of Variable Resource (VR) Customers not met by BR, Western may make supplemental power purchases pursuant to the CPP rate schedule. The FLS and VR Customers who contract with Western for such service pay all supplemental power costs. The FLS Customers pay a portfolio management charge pursuant to their FLS contract, whereas VR Customers pay a scheduling charge for any CPP pursuant to the provisional rate schedule.

Provisional Transmission and Ancillary Service Rates

At least annually, Western will publish the CVP transmission rates for point-to-point (PTP) and network integration transmission service (NITS), the seasonal COTP and PACI transmission rates, and CVP regulation and frequency response service rates. Rates are based on a cost-of-service (COS) study to determine the costs, by project, that support the transfer capability of each transmission system and the costs that support the generation capability of the CVP system. Generally, the costs allocated through the COS study for the transmission systems include O&M, interest, and depreciation expenses. Western's costs for scheduling, system control and dispatch service associated with CVP, COTP, and PACI transmission service are included and recovered through the respective transmission system's revenue requirements (RR). Third-party transmission service costs are passed through directly to each customer. Spinning and supplemental reserve services are priced consistent with the CAISO market price plus all costs incurred for the sale of these reserves. Customers who have a contractual obligation to self-provide spinning and supplemental reserves, and do not fulfill their obligation, will be assessed a penalty equal to the greater of 150 percent of Western's actual cost or 150 percent of the market price. Similarly, for EI service, customers operating outside of their contractual bandwidth (under-delivery) will pay the greater of 150 percent of Western's actual cost or 150 percent of the market price. Given that Western's EI Customers are and will continue to operate under existing agreements, Western will continue its existing rate methodology for EI. During or after the applicable rate period, Western will review FERC Order No. 890, as well as Western's existing settlements and billing processes, and will reconsider transitioning to FERC's methodology.

Finally, in response to FERC's Order No. 890, Western added two new rate schedules to be effective during the new rate period: UUP and GI. The UUP will be assessed at 200 percent of the effective PTP transmission rate when transmission service is used and not reserved or when used in excess of reservation. The GI rate will use the same methodology as Western's EI service rate. Currently, Western has no customers subject to this provisional GI rate.

Information on Path 15 Transmission Upgrade

The Path 15 Transmission Upgrade was completed in 2005. Western turned over the operational control of Western's Path 15 Transmission Upgrade to the CAISO. Western maintains the transmission line and is compensated by Atlantic Path 15, LLC for maintenance costs. The CAISO charges for use of the Path 15 Transmission Upgrade in accordance with the CAISO tariff. Western does not sell transmission capacity on Path 15 Transmission Upgrade. Western collects revenues from the CAISO under its agreements with the CAISO. Under Amendment No. 48, the CAISO remits to Western, wheeling, congestion, and Congestion Revenue Rights revenues associated with Western's rights on the Path 15 Transmission Upgrade.

Confirmation, Approval, and Placing Rate Order WAPA–156 in Place

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00C, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place into effect on October 1, 2011, on an interim basis, Rate Order No. WAPA–156, which includes Rate Schedules CV–F13, CPP–2, CV–T3, CV–NWT5, COTP–T3, PACI–T3, CV–TPT7, CV–UUP1, CV–SPR4, CV–SUR4, CV–RFS4, CV–EID4, and CV–GID1, for the CVP, COTP, and PACI of Western. By this Order, I am placing the rates into effect in less than 30 days to meet contract deadlines, to avoid financial difficulties and to provide a rate for a new service. The provisional rates shall be in effect until FERC confirms, approves, and places the rates in effect on a final basis through September 30, 2016, or until the rates are superseded.

Dated: September 2, 2011.

Daniel B. Poneman,

Deputy Secretary.

DEPARTMENT OF ENERGY

Deputy Secretary

Rate Order No. WAPA–156

In the matter of: Western Area Power Administration Rate Adjustment for the Central Valley Project, the California-Oregon Transmission Project, and the Pacific Alternating Current Intertie

These power, transmission, and ancillary services formula rates are established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior (DOI) and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939, (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to Federal Energy Regulatory Commission (FERC).

Existing DOE procedures for public participation in power rate adjustments (10 CFR 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

2004 Power Marketing Plan: The 2004 Central Valley Project (CVP) Power Marketing Plan effective January 1, 2005.[6] The final marketing program for the Sierra Nevada Region (SNR) power after 2004 established through a public process and published in the **Federal Register** at 64 FR 34417.

Administrator: Administrator for the Western Area Power Administration (Western)

Ancillary Services: Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission provider's transmission system in accordance with standard utility practice. Ancillary services are generally described in Federal Energy Regulatory Commission (FERC) Orders 888 and 890, including: spinning reserve, supplemental reserve, regulation, Energy Imbalance (EI), and Generator Imbalance (GI).

Balancing Authority (BA): The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a BA area, and supports interconnection frequency in real-time.

Balancing Authority of Northern California (BANC): A joint power agency composed of Sacramento Municipal Utility District (SMUD), Redding Electric Utility, Roseville Electric, and Modesto Irrigation District. The BANC is a legal structure, and it contracts SMUD to act as the BA operator for the BANC as of May 1, 2011.

Base Resource (BR): The Central Valley and Washoe Project power output and existing power purchase contracts extending beyond 2004 as determined by Western to be available for marketing after meeting the requirements of Project Use (PU) and First Preference (FP) Customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services. The BR, as defined above, will include CVP and Washoe Project generation supported by certain power purchases.

BR%: Base Resource Percentage.

California Independent System Operator (CAISO): The FERC-regulated, state-chartered, non-profit corporation, independent system operator and BA area of most of California's transmission grid.

California-Oregon Intertie (COI): Consists of three 500-kilovolt (kV) lines linking California and Oregon, the California Oregon Transmission Project, and the Pacific Alternating Current Intertie (PACI) (two lines). The Western Electricity Coordinating Council (WECC) establishes the seasonal transfer capability for the COI.

California-Oregon Transmission Project (COTP): A 500-kV transmission project stretching from Captain Jack Substation to Tesla Substation in which Western has part ownership.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment expressed in kilowatt (kW).

Central Valley Project (CVP): A multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield, California.

CFR: Code of Federal Regulations.

COI Rating Seasons: Consists of summer, June through October; winter, November through March; and spring, April through May.

Component 1: A part of a formula rate. Component 1 is the variable portion of Western's rate schedules. Component 1 is the methodology used to determine revenue requirements or rates that recover the costs for a specific service or product.

Component 2: A part of a formula rate. Component 2 is a pass-through provision of Western's rate schedules. The language is the same in each rate schedule.

Component 3: A part of a formula rate. Component 3 is a pass-through provision of Western's rate schedules. The language is the same in each rate schedule.

Contract 2948A: Contract No. 14–06–200–2948A was the Integration Contract between PG&E and the United States of America, which expired on December 31, 2004. The contract provided for integrating Western's resources with Pacific Gas and Electric's (PG&E) and required PG&E to serve the combined PG&E/Western load with the integrated resource.

COS: Cost of Service.

Custom Product Power (CPP): Refers to power purchased by Western to meet a customer's load.

Customer: An entity with a contract that receives service from the Western's SNR.

DOE: United States Department of Energy.

DOE Order RA 6120.2: A DOE order outlining power marketing administration financial reporting and ratemaking procedures.

EI: Energy Imbalance.

Federal Energy Regulatory Commission (FERC): Referred to as the FERC. FERC is an independent agency that regulates the interstate transmission of electricity.

First Preference (FP): Refers to an entity qualified to use Preference Power within a county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity River Division Act of August 12, 1955 (69 Stat. 719) and the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

Fiscal Year (FY): Refers to the Federal Fiscal Year, October 1 through September 30.

Full Load Service (FLS): The BR customer that will have its entire load at the delivery point(s) met with Western power and Third-Party Power, and whose Portfolio Management functions for said delivery will be performed by Western.

GI: Generator Imbalance.

HE: Hourly Exchange.

Host Balancing Authority (HBA): Confirms and implements transactions that operate generation or serves customers directly within the BA's metered boundaries. The BA within whose metered boundaries a jointly-owned unit is physically located. Western operates as a Sub-Balancing Authority (SBA) under the BANC which operates the HBA.

Kilovolt (kV): The electrical unit of measure of electric potential that equals 1,000 volts.

Kilowatt (kW): The electrical unit of capacity that equals 1,000 watts.

Kilowatthour (kWh): The electrical unit of energy that equals 1,000 watts produced or delivered in 1 hour.

Kilowattmonth (kWmonth): The electrical unit equal to one kW produced or delivered for 1 month.

Load: The amount of electric power or energy delivered or required at any specified point(s) on a transmission or distribution system.

Megawatt (MW): The electrical unit of capacity that equals one million watts or 1,000 kW.

Megawatt hour (MWh): The electrical unit of energy that equals 1,000,000 watts produced or delivered for 1 hour.

MRR: Monthly Revenue Requirement.

[6] *See* 64 FR 34417 (1999).

NERC: The North American Electric Reliability Corporation's (NERC) is the electric reliability organization certified by FERC to establish and enforce reliability standards for the bulk-power system.
NEPA: National Environmental Policy Act.
Network Integration Transmission Service (NITS): Firm transmission service for the delivery of capacity and energy from designated network resources to designated network loads not using one specific path.
Open Access Same Time Information System (OASIS): The information system and standards of conduct contained in Part 37 of FERC's regulations that Western utilized in developing its electronic posting system for transmission access data.
Open Access Transmission Tariff (OATT): Western's open access transmission tariff accepted by the FERC, as it may be amended and supplemented.
O&M: Operations and Maintenance.
Pacific Alternating Current Intertie (PACI): A 500-kV transmission project of which Western owns a portion of the facilities.
PG&E: Pacific Gas and Electric Company.
Power: Capacity and energy, and it is measured in watts and often expressed in kW or MW.
Power Repayment Study (PRS): The PRS is used to calculate how much revenue is needed to meet annual investment obligations, O&M expenses, and repayment requirements (including repayment periods).
Preference: Refers to the provisions of Reclamation Law that requires Western to first make Federal power available to certain entities. For example, section 9(c) of the Reclamation Project Act of 1939 states that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other non-profit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936 (43 U.S.C. 485h(c)).
Project Use (PU): Power designated by Reclamation Law to be used to operate CVP and Washoe Project facilities.
Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.
PRR: Power Revenue Requirement.
PTP: Point-to-Point.
Reclamation: The U.S. Department of the Interior, Bureau of Reclamation.
Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework under which Western markets power.
Regulation and Frequency Response: The ancillary service under which a BA maintains moment-by-moment load interchange-generation balance with the BA area and supports interconnection frequency.
RR: Revenue Requirement.
SMUD: Sacramento Municipal Utility District.
SNR: Sierra Nevada Customer Service Region.
Sub-Balancing Authority (SBA): Western's contract-based BA within the SMUD's BA, now BANC.
Supplemental Power: The firm capacity and energy, provided by Western, that a customer(s) needs in addition to its BR for use in meeting its load.
Transmission: The movement or transfer of electric energy between points of supply and points at which it is transformed for delivery to customers or is delivered to other electric systems.
Transmission Service Provider (TSP): The entity that administers the transmission tariff and provides transmission service to transmission customers under applicable transmission service agreements.
TRR: Transmission Revenue Requirement.
UUP: Unreserved Use Penalties.
VR: Variable Resource.
Western: Western Area Power Administration.
Washoe Project: A Reclamation project located in the Lahontan Basin in west-central Nevada and east-central California.
WECC: The Western Electricity Coordinating Council (WECC) is the regional entity responsible for coordinating and promoting bulk electric system reliability in the Western Interconnection.

Effective Date

The provisional formula rates will take effect on the first day of the first full billing period beginning on or after October 1, 2011, and will remain in effect through September 30, 2016, pending approval by the Federal Energy Regulatory Commission (FERC) on a final basis.

Public Notice and Comment

Western Area Power Administration (Western) has followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR 903, in developing these formula rates and schedules. The steps Western took to involve interested parties in the rate process were:

1. The rate adjustment process began June 10, 2008, when Western mailed a notice announcing an informal meeting to all Sierra Nevada Region (SNR) Preference Customers and interested parties.

2. Western held 14 public informal rate meetings beginning June 2008 through April 2010, in Folsom, California, to discuss the formula rate methodologies, components, and rationale for formula rates, to discuss possible formula rate changes, and to answer questions and seek customer input or proposed changes. Meeting agendas, notes, and handouts are posted on Western's Web site: *http://www.wapa.gov/sn/marketing/rates/ratesProcess/informalProcess/index.asp*.

3. A **Federal Register** notice (FRN) published on January 3, 2011,[7] which announced the proposed rates for Central Valley Project (CVP), California-Oregon Transmission Project (COTP), and Pacific Alternating Current Intertie (PACI), began the public consultation and comment period and set forth the dates and location of public information and public comment forums.

4. On January 5, 2011, Western sent an e-mail notification to all SNR Preference Customers and interested parties transmitting the FRN and reiterating the dates and locations of the public information and comment forums.

5. On January 14, 2011, Western sent an e-mail notification to all SNR Preference Customers and interested parties that the 2012 Rates Brochure for Proposed Rates was available upon request and posted on Western's Web site at *http://www.wapa.gov/sn/marketing/rates/*.

6. On January 14, 2011, Western sent an e-mail notification to all SNR Preference Customers and interested parties reminding them of the January 25, 2011, Public Information Forum (PIF).

7. On January 25, 2011, Western held a PIF at the Lake Natoma Inn in Folsom, California. Western provided explanations of the proposed rates for CVP, COTP, PACI, and Path 15 information, responded to questions, and explained the differences between the existing and the proposed rates. Western provided rate brochures and informational handouts.

8. On February 8, 2011, Western sent an e-mail notification to all SNR Preference Customers and interested parties announcing the location of Western's Web site to view all comments received during the comment period. That Web site also contained

[7] *See* 76 FR 127 (2011).

information on how to obtain a copy of the PIF transcript.

9. On February 23, 2011, Western sent an e-mail notification to all SNR Preference Customers and interested parties reminding them of the March 1, 2011, Public Comment Forum (PCF).

10. On March 1, 2011, Western held a PCF to give Preference Customers and interested parties an opportunity to comment for the record. Three individuals commented at this forum.

11. On March 23, 2011, Western sent e-mail notification to all SNR Preference Customers and interested parties that the PCF transcript was received and a Summary of Comments from the PCF was posted on Western's Web site. In addition to comments received at Western's PCF, Western received 17 comment letters during the consultation and comment period, which ended on April 4, 2011. All comments received prior to the close of the consultation and comment period have been considered in preparing this Rate Order. All written comments received are posted on Western's Web site: *http://www.wapa.gov/sn/marketing/rates/ratesProcess/formalProcess/CIL2011/index.asp*.

12. On April 12, 2011, Western sent an e-mail notification to all SNR Preference Customers and interested parties announcing the end of the public consultation and comment period.

Comments

Written comments were received from the following organizations: Alameda Municipal Power, California; Bay Area Rapid Transit, California; Calaveras Public Power Agency, California; Calpine Corporation, California; City of Biggs, California; City of Lodi, California; City of Palo Alto, California; City of Santa Clara (dba Silicon Valley Power), California; Eastside Power Authority, California; Northern California Power Agency (representing the Bay Area Rapid Transit District, Truckee-Donner Public Utility District, the Plumas-Sierra Rural Electric Cooperative, the Port of Oakland, and the cities of Alameda, Biggs, Fallon, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, and Ukiah), California; Plumas-Sierra Rural Electric Cooperative, California; Power and Water Resources Pooling Authority (representing the Arvin-Edison Water Storage District, Banta-Carbona Irrigation District, Byron-Bethany Irrigation District,[8] Cawelo Water District, Glenn-Colusa Irrigation District, James Irrigation District, Lower Tule River Irrigation District, Provident/Princeton Irrigation District, Reclamation District 108, Santa Clara Valley Water District, Sonoma County Water Agency, West Side Irrigation District, West Stanislaus Irrigation District, and the Westlands Water District), California; Redding Electric Utility, California; Roseville Electric, California: Sacramento Municipal Utility District, California; Trinity Public Utility District, California; Tuolumne Public Power Agency, California.

Representatives of the following organizations made oral comments:

Calpine Corporation, California.

Northern California Power Agency (representing the Bay Area Rapid Transit District, Truckee-Donner Public Utility District, the Plumas-Sierra Rural Electric Cooperative, the Port of Oakland, and the cities of Alameda, Biggs, Fallon, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, and Ukiah), California

Redding Electric Utility, California.

Project Description

A. History and Description of the CVP, PACI, and COTP

The CVP is located within the Central Valley and Trinity River basins of California. The CVP includes 18 constructed dams and reservoirs with a total storage capacity of 13 million acre feet. The system includes 615 miles of canals, five pumping facilities, and ten power plants with a maximum operating capability of about 2,113 megawatts (MW), approximately 865 circuit-miles of high-voltage transmission lines, 22 substations, and 19 communication sites. The Bureau of Reclamation (Reclamation) operates the water control and delivery system and all of the power plants with the exception of the San Luis Pump-Generator (also known as W.R. Gianelli), which is operated by the State of California for Reclamation.

The Emergency Relief Appropriations Act of 1935 initially authorized the CVP.[9] Congress reauthorized the CVP in 1937 in the Rivers and Harbors Act.[10] As part of the CVP, Congress authorized Reclamation to construct the Shasta Dam on the Sacramento River and Friant Dam on the San Joaquin River. Between the two dams are the Tracy Pumping Plant and the Delta-Mendota Canal, the Contra Costa Canal, the Friant-Kern Canal, the Madera Canal, and the Delta Cross Channel.[11] Power plants at Shasta and Keswick Dams were also included in the authorization, along with high-voltage transmission lines designed to transmit power from Shasta and Keswick Power Plants to the Tracy pumps and to integrate the Federal hydropower into other electric systems.[12] Through various acts, Congress authorized the construction and integration of numerous other facilities into the CVP. For instance, in 1944, Congress authorized the American River Division (Division) to be constructed by the United States Army Corps of Engineers (Corps).[13] In 1949, the Division was reauthorized for integration into the CVP.[14] The Division included Folsom Dam and Power Plant, Nimbus Dam and Power Plant, and the Sly Park Unit, all located on the American River.[15] In 1955, Congress authorized the Trinity River Division (Trinity Division) to include Trinity Dam and Power Plant, Lewiston Dam and Power Plant, and the Lewiston Fish Facilities, all located on the Trinity River.[16] The Trinity Division also includes Judge Francis Carr Power Plant, Whiskeytown Dam, and the Spring Creek Power Plant. In 1960, Congress authorized the San Luis Unit, including the B.F. Sisk San Luis Dam and San Luis Reservoir, San Luis Canal, Coalinga Canal, O'Neill and Dos Amigos Pumping Plants, and William R. Gianelli Pump-Generator.[17] In 1965, Congress authorized construction of the Auburn-Folsom South Unit (Unit) as an addition to the CVP.[18] This Unit included four sub-units, three of which have been constructed: Foresthill, Folsom-Malby, and Folsom South Canal sub-units. Congress has not authorized funding to complete the construction of the Auburn Dam, which is part of the fourth sub-unit. Congress authorized the San Felipe Division in 1967.[19]

Three Corps projects—Buchanan, Hidden, and New Melones—were authorized for integration into the CVP in 1962.[20] The Black Butte Integration Act added Black Butte, another Corps project completed in the 1960's, to the CVP in 1970.

In 1964, Congress authorized construction of the 500-kilovolt (kV)

[8] Byron Bethany Irrigation District withdrew from the Power and Water Resources Pooling Authority effective June 30, 2011.

[9] *See* 49 Stat. 115 (1935).

[10] *See* 50 Stat. 844, 850 (1937).

[11] *See* Plans set forth in Rivers and Harbors Committee Document Numbered 35, 75th Cong., as adopted in 49 Stat. 1028, 1038 (1935).

[12] *See* Id.

[13] *See* 58 Stat. 887, 901 (1944).

[14] *See* 63 Stat. 852 (1949).

[15] *See Id.*

[16] *See* 69 Stat. 719 (1955).

[17] *See* 74 Stat. 156 (1960).

[18] *See* 79 Stat. 615 (1965).

[19] *See* 81 Stat. 173 (1967).

[20] *See* 76 Stat. 1173, 1191 (1962).

Pacific Northwest-Pacific Southwest Intertie (Intertie). In northern California, Western owns the Malin to Round Mountain portion of the PACI.[21] In 1984, Congress authorized Western to construct or participate in the construction of the COTP.[22] In 2001, Congress authorized Western to complete the Path 15 portion originally authorized under the COTP.[23] Western, in marketing the Federal hydroelectric power generated from the CVP, has approximately 47 wholesale customers serving an estimated two million people. Western power customers include four First Preference (FP) Customers, public utility districts, state agencies, Federal agencies, irrigation districts, municipalities, and Native American tribes.

B. The 2004 Marketing Plan

Western's SNR markets hydropower generation of the CVP and Washoe Projects. From 1967 through 2004, under the terms of Contract 14–06–200–2948A (Contract 2948A) with the Pacific Gas and Electric Company (PG&E), the CVP resources, along with other Western resources, were integrated with PG&E resources. PG&E served the combined Western/PG&E load with the integrated resource. Under this contract, PG&E delivered power to both the Project Use (PU) and Preference Power Customers. Contract 2948A expired on December 31, 2004, and PG&E informed Western it intended not to extend the contract beyond that date. As a result of the pending termination, Western worked with its customers to develop and implement the 2004 Power Marketing Plan (Marketing Plan). Western published the Marketing Plan in the **Federal Register** on June 25, 1999.[24] It established the criteria for marketing CVP and Washoe Project power output for a 20-year period from January 1, 2005, through December 31, 2024.

The Base Resource (BR) is a fundamental component and the primary power product marketed under this Marketing Plan. Under previous marketing plans, customers received a fixed capacity and load factor energy allocation. Under the Marketing Plan, Preference Customers (other than FP) receive an allocated percentage of the BR. Each BR Customer signed a BR contract under the Marketing Plan.[25]

The Marketing Plan acknowledges the BR may vary widely on an hourly, daily, weekly, monthly, and annual basis depending on hydrological conditions and other constraints that govern CVP operations. CVP generation must be adjusted for PU, FP entitlements, operations, maintenance, reserves, transformation losses, and certain ancillary services before determining the net CVP generation amount available for marketing. During some months, purchases may be required to meet PU and FP Customers' obligations, and only a negligible amount, if any, of BR will be available during some hours of such months.

According to the Marketing Plan, Western markets the BR separately or in combination with custom products. These custom products could include Western acting on behalf of a customer to: (1) Purchase some level of firming power; (2) manage a portfolio of power resources; (3) provide scheduling services per balancing authority (BA) operator protocols; and (4) procure ancillary services. For those BR Customers desiring custom products, Western developed additional contracts detailing these requirements.

Western classified customers who contract for custom products into two different customer groups: Variable Resource (VR) and Full Load Service (FLS) Customers. VR Customers schedule their Federal power from Western into their own ''resource portfolios'' to meet their load requirements. The FLS Customers are those who require some additional products and services to meet their full-load requirements and who contracted with Western for such service.

The Marketing Plan also stipulated that Western would establish and manage an exchange program to allow all customers to fully and efficiently use their power allocations. Western developed both hourly and seasonal exchange programs. Further specifics and stipulations of this program are available in Exhibit B of the BR contract.

Pursuant to the Marketing Plan, BR Customers pay for CVP network transmission service with their BR. Western also provides operating reserves to its customers per the BA area operator's protocols to support BR, PU, and FP deliveries. For all other products, such as a custom product, separate transmission arrangements must be made by the applicable customer with the appropriate transmission service provider (TSP). Customers interested in acquiring transmission service from the CVP system above that provided for BR deliveries will need to request transmission through Western's Open Access Transmission Tariff (OATT). A copy of the OATT can be obtained at Western's Web site at *http://www.wapa.gov/transmission/oatt.htm*. To the extent possible, if Western has sufficient transmission rights, Western's merchant will use its rights to meet custom product transmission requirements.

C. Path 15 Information

In May 2001, DOE released its National Energy Policy recommending Western take action to explore relieving the constraints on Path 15. Western analyzed the feasibility to construct the Path 15 Transmission Upgrade Project which included building a third transmission line and other upgrades that would allow about 1,500 MW of additional electricity to be transmitted across the state. The path upgrade was intended to relieve constraints on the existing north-south transmission lines. In order to increase the path rating, Western determined a new 84-mile long, 500-kV transmission line was needed between PG&E's Los Banos and Gates Substations. Additionally, the Los Banos and Gates Substations needed to be modified to accommodate the new equipment and a second 230-kV circuit between Gates and Midway.

Western and the Path 15 participants completed the Path 15 Transmission Upgrade in 2005. Western turned over the operational control of Western's Path 15 Transmission Upgrade to the California Independent System Operator (CAISO). Western maintains the transmission lines and is compensated by Atlantic Path 15, LLC, for the maintenance work costs. The CAISO charges for use on the Path 15 Transmission Upgrade as part of its rates. Western does not sell transmission capacity on the Path 15 Transmission Upgrade. Western collects revenues from the CAISO under its agreements with the CAISO. Under Amendment No. 48, the CAISO remits revenue to Western from wheeling, congestion, and Congestion Revenue Rights associated with Western's rights on the Path 15.[26]

Power Repayment Study

Western prepares a power repayment study (PRS) each fiscal year (FY) to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the commercial power

[21] *See* 78 Stat. 756 (1964).
[22] *See* 98 Stat. 403 (1984).
[23] *See* 115 Stat. 174 (2001).
[24] *See* 64 FR 34417 (1999).
[25] *See* 75 FR 76975 (2010).
[26] Amendment No. 48 amended CAISO's tariff to provide congestion revenues, wheeling revenues, and firm transmission rights auction revenues to entities other than CAISO's Participating Transmission Owners, if any such entities fund transmission facility upgrades on the CAISO grid. *See generally* Federal Energy Regulatory Commission Docket No. ER03–407–000.

function. Repayment criteria are based on law, applicable policies (including DOE Order RA 6120.2), and authorizing legislation.

Existing and Provisional Rates

The Deputy Secretary of Energy approved the existing formula rates for power, transmission, and ancillary services under Rate Order No. 115 on November 22, 2004.[27] FERC confirmed and approved the rates and placed them into effect on a final basis on October 4, 2005.[28] The rates were amended by Rate Order No. 128 on July 26, 2006 [29] and extended by Rate Order No. 139 on August 12, 2008.[30] The existing formula rates expire on September 30, 2011. The provisional rates continue the existing formula rate methodologies for power; CVP, COTP, and PACI transmission; transmission of Western power by others: Custom Product Power (CPP): and ancillary services. The only changes between the provisional rates and the existing rates are described in more detail in the section titled ''Rate Discussion.'' The tables below compare the current rates (FY 2011) for power, transmission, and ancillary services under the existing rate formulas to estimated rates (FY 2012) under the provisional rate formula methodologies as well as any changes to the formula rate methodology. All rates are subject to change prior to October 1, 2011.

RATE COMPARISON

Service	Actual FY 2011	Estimated FY 2012	Percent change (%)	Financial change	Methodology change
Power Service Rates					
PRR	$75,751,929	$73,468,299	(3.01)	Forecasted financial and/or operational data.	None, billing clarification only.
FP Percentage	4.80%	4.77%	(0.63)	Change due to forecasted operational data.	Adopt a FP% true-up.
Maximum FP Allocation	17.51%	20.54%	17.30	Change due to forecasted operational data.	None.
FP RR	$3,636,093	$3,504,438	(3.62)	Change due to forecasted financial and/or operational data.	Adopt a FP% true-up.
BR RR	$72,115,836	$69,963,861	(2.98)	Change due to forecasted financial and/or operational data.	Adopt a FP% true-up.
CPP	Pass through	Pass through	N/A	N/A	Added Components 2 and 3.
VR Scheduling Charge (per schedule).	$31.07	$37.91	22.01	Updated financial data	None, charges set for 5-year rate period.
Transmission & Ancillary Services					
CVP PTP Transmission ($/kW—Month).	$1.04 (April 2011)	$1.31	25.96	Rate change due to the anticipated completion of new assets that support transmission function.	None.
CVP NITS ($/monthly)	$1,783,441	$2,247,754	26.03	Rate change due to anticipated completion of new assets that support transmission function.	None.
CVP PTP Transmission ($/MWh).	$2.74 (Spring)	$2.72 (Winter)	(0.37)	Rate decrease due to estimated change in financial data.	None.
PACI PTP Transmission ($/MWh).	$1.21 (Spring)	$1.22 (Winter)	0.83	Rate increase due to estimated change in financial data.	None.
COTP PTP Transmission ($/MWh).	$2.74 (Spring)	$2.72 (Winter)	(0.73)	Rate decrease due to estimated change in financial data.	None.
Third-Party Transmission.	Pass through	Pass through	N/A	N/A	None.
Unreserved Use Penalties.	N/A	200%	New	New penalty charge	New.
Regulation and Frequency Response ($/kW-month).	$4.33	$4.05	(6.47)	Decrease due to change in financial data.	If self-provided, the penalty charge is the greater of 150% of actual or 150% of market.

[27] *See* 69 FR 70510 (2004).

[28] *See Western Area Power Admin.,* 113 FERC ¶ 61,026 (2005).

[29] *See* 71 FR 45821 (2006).

[30] *See* 73 FR 48381 (2008).

RATE COMPARISON—Continued

Service	Actual FY 2011	Estimated FY 2012	Percent change (%)	Financial change	Methodology change
Spinning/Supplemental Reserves.	Price consistent with CAISO.	Price consistent with CAISO.	N/A	N/A	If self-provided, the penalty charge is the greater of 150% of actual or 150% of market.
EI Service	Tiered	Tiered	N/A	N/A	Charge greater of 150% of actual or 150% of market. Variable rate.
GI Service	NA	New	New	New	New tiered methodology similar to EI.

Certification of Rates

Western's Administrator certified that the provisional rates, Rate Schedules CV–F13, CPP–2, CV–T3, CV–NWT5, COTP–T3, PACI–T3, CV–TPT7, CV–UUP1, CV–SPR4, CV–SUR4, CV–RFS4, CV–EID4, and CV–GID1, for CVP firm power, transmission, and ancillary services are at the lowest possible rates consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

Rates Discussion

Following is a discussion comparing the existing formula rates to the provisional formula rates. Unless otherwise noted, the formula rate methodologies for power; CVP, COTP, and PACI transmission; transmission of Western power by others; CPP; and ancillary services have not changed. The percentage differences in rates noted in the table above are due to estimated or forecasted data factors (costs, investments, generation, load, *etc.*) and not due to a change to the formula rate methodology. All FY 2012 rates are estimates and subject to change prior to publication of the final FY 2012 rate. Having considered all comments submitted during the public consultation and comment period, the current rate action adopts existing formula rate methodologies for power; CVP, COTP, and PACI transmission; transmission of Western power by others; CPP; and ancillary services with the following exceptions:

1. Two new rate schedules: Unreserved Use Penalties (UUP) and Generator Imbalance (GI);

2. Annual true-up for FP percentages;

3. In addition to the existing 150 percent penalty on the CAISO market price, Western will adopt a 150 percent penalty on Western's actual cost when charging for ancillary services and will charge the greater of the two;

4. Costs incurred under Energy Imbalance (EI)/GI when disposing of surplus energy, including negative pricing of such energy, will be charged to the responsible party;

5. For intermittent resources interconnected to Western's system, Western will not charge the 150 percent penalty, and charge the greater of CAISO market price or Western's actual cost;

6. Added Components 2 and 3, standard cost recovery language, to CPP formula rate; and

7. Rate Schedules include miscellaneous language changes and billing clarifications. Formula rates methodologies are included in the attached provisional rate schedules. All the formula rates contain three components. Component 1 is the methodology used to develop the rate and is specific to each rate. Components 2 and 3 are applicable to all rate formulas.

A. Power Rate Discussion FP and BR

The difference in the forecasted FY 2012 revenue requirement (RR) and the existing RR is the result of a change in projected revenue and expenses and not a formula rate methodology change. The only change to this formula rate is the adoption of an annual FP percentage true-up. A change resulting from the FP percentage prior period true-up will impact both FP and BR RR to ensure full recovery of the Power Revenue Requirement (PRR).

Both the existing formula rate and the provisional formula rate for FP Customers consist of three components:

Component 1:

$$\text{FP Customer Percentage} = \frac{\text{FP Customer Load}}{\text{Gen} + \text{Power Purchases} - \text{PU}}$$

$$\text{FP Customer Charge} = \text{FP Customer Percentage} \times \text{MRR}$$

Where:

FP Customer Load = An FP Customer's forecasted annual load in megawatthours (MWh).

Gen = The forecasted annual CVP and Washoe generation (MWh).

Power Purchases = Power purchases for PU and FP loads (MWh).

PU = The forecasted annual PU loads (MWh).

MRR = Monthly PRR.

The formula rate also contains Components 2 and 3.

Both the existing formula rate and the provisional rate for BR consist of three components:

Component 1:

BR Customer Allocation = (BR RR × BR%)

Where:

BR RR = BR Monthly RR.

BR% = BR percentage for each customer as indicated in the BR contract after adjustments for programs, such as hourly exchange (HE), if applicable.

The formula rate also contains Components 2 and 3.

The table below compares the existing RR for FY 2011 to the estimated RR for FY 2012 under the provisional formula rates.

COMPARISON OF EXISTING TO PROVISIONAL PRR, AND ALLOCATION TO FP AND BR CUSTOMERS

Service	Existing RR FY 2011	Estimated RR for the provisional formula rate (effective FY 2012)	Percent Change
PRR	$75,751,929	$73,468,299	(3.01)
FP RR	3,636,093	3,504,438	(3.62)
BR RR	72,115,836	69,963,861	(2.98)

The 3.01 percent forecasted decrease in the PRR is due primarily to a decrease in other expenses and increase in transmission revenues, which offsets expenses in the PRR. The increase in transmission revenue is driven by the anticipated completion of assets supporting the transmission function. As indicated in the current rate structure, the power rates are published annually by September 30 and reviewed during March of each year. The annual PRR is allocated to FP Customers based on each FP Customer's percentage, as adjusted for prior period true-up, and the remainder to BR Customers based on their contractual percentage.

Western will continue to maintain its current policy and perform a FP percentage midyear review and adjust the FP percentages if necessary. Any adjustment to the FP percentages at midyear will be applied to the annual PRR and billed during the remainder of the FY. In addition, Western is adopting an annual true-up methodology for each FP customer's percentage to ensure FP Customers pay their proportionate share of the annual PRR. Following the completion of the true-up, Western will allocate the charge or credit through the PRR at the beginning of the following FY. Also, according to current policy, FP maximum percentage changes will be established once at the beginning of each 5-year rate period.

The table below compares the FP percentages as well as their maximum percentages for the two periods.

FP PERCENTAGE COMPARISON, AND ACTUAL MAXIMUM PERCENTAGES FOR EFFECTIVE RATE PERIOD

FP Customers	FP percentages (annual)		Maximum FP customer percentage applied to the RR	
	Existing FY 2011 (%)	Estimated FY 2012 (%)	Existing (FY 2005–2011) (%)	Actual (FY 2012–2016) (%)
Sierra Conservation Center	0.37	0.37	1.39	1.58
Calaveras Public Power Agency	0.90	0.90	3.49	3.81
Trinity Public Utilities District	2.80	2.80	9.21	12.01
Tuolumne Public Power Agency	0.73	0.70	3.42	3.16
Total	4.80	4.77	17.51	20.56

The change in FP percentages is due to changes in generation and FP customer loads and not a formula rate methodology change. The increase in FP maximum percentage is due to a collective increase in FP customer loads.

During the effective rate period, if deemed appropriate, Western will reevaluate the FP maximum percentage based on new data.

As stated above, the BR RR is the remainder of the PRR less FP RR. When the FP percentage is adjusted for a prior period true-up, the BR will also be adjusted. An example calculation is shown in the comments section as well as in the rate schedule.

The provisional formula rates for the PRR as allocated to BR and FP Customers includes: (1) Operations and maintenance (O&M) expense; (2) annual investment and replacement repayment; (3) aid-to-irrigation costs; (4) interest expense; (5) power purchases for firming BR; (6) Washoe Project annual costs after PU loads are met; (7) other miscellaneous expenses allocated to power, such as settlements, California-Oregon Intertie (COI) path operator costs, etc.; (8) the pass through of FERC's or other regulatory bodies' accepted or approved charges or credits; (9) the pass through of the Host Balancing Authority's (HBA) charges or credits; (10) any other statutorily-required costs or charges; and (11) any other costs including uncollectible debt.

Expenses are offset by revenues from PU energy, transmission revenue, ancillary service revenue, scheduling coordinator (SC), portfolio management (PM) and VR charge administrative fees or scheduling charge, all pass-through revenue, and any other miscellaneous revenue.

The PRR will be allocated first to FP Customers based on their percentages and prior year true-up, subject to the maximum cap, then the remaining PRR amount will be allocated to BR Customers based on their BR allocation percentages and prior year FP true-up, as adjusted for programs, such as HE if applicable.

The BR RR will be collected in two, 6-month periods: 25 percent for October through March and 75 percent for April through September. However, the FP RR is not subject to the 25/75 percent split; and it will be collected evenly over a 12-month period.

The formula rates will be effective at the beginning of each FY and reviewed in March of each year. If the March midyear review reflects a change of $5 million or more, the annual PRR will be revised. The FP percentages are also reviewed at midyear. If the midyear review reflects a change to a FP customer's percentage of more than one-half of 1 percent, that customer's percentage will be revised for the entire FY. Also, any adjustments as a result of the FP true-up will be incorporated in the PRR each October following the true-up.

The formula rates apply to CVP BR and FP Customers. The estimated RRs and FP percentages are subject to

change prior to the rates taking effect for FY 2012. The RRs will be finalized by Western on or before October 1, 2011.

B. CPP

Under the CPP provisional rate, the CPP cost recovery does not change from the existing formula rate methodology and remains 100 percent pass through. The provisional formula rate also added Component 2 and Component 3. The provisional formula rate for CPP applies to power supplied by Western to meet a customer's load. CPP may include long- and short-term purchases at various rates. As more fully described in the rate schedule, the CPP provisional formula rate is comprised of three components. All costs associated with CPP will be recovered through Component 1 of the formula rate that passes through the cost of the purchase to a specific customer(s). Such costs could include Western's scheduling costs as well as the cost of the power.

The VR scheduling charge is to recover Western's cost for scheduling VR customer's CPP service. Under the provisional formula rate, Component 1, the VR customer's scheduling charge for FY 2012 is $37.91 per schedule. This is a 22 percent increase from the January 1, 2005, through September 30, 2011, VR scheduling charge of $31.07 per schedule. This increase is based on a percentage change in O&M from the 2005 rate case. For FY 2013 through FY 2016 VR scheduling charge increases 3 percent each year to reflect inflationary cost increases.

C. Transmission

Cost-of-Service Study

Western is using the same methodology to allocate costs to the transmission RRs and regulation and frequency response RR for both the existing and provisional formula rates. Western prepared a detailed cost-of-service (COS) study to determine the RR that will be recovered through the CVP regulation and frequency response service formula rate and the CVP, COTP, and PACI transmission service formula rates. The costs allocated through the COS study generally include O&M, interest, and depreciation expenses. This combined COS study integrates all three transmission systems. Each CVP, COTP, and PACI facility was researched in order to determine its functional use. The costs for CVP, COTP, and PACI facilities that support the transfer capability of the transmission system (excluding generation tie-lines and radial lines) are included in the respective transmission system's RR; whereas, the cost for facilities that support the generation capability of the CVP system (including generation tie-lines and radial lines) are included in the CVP generation RR and are used in the regulation and frequency response service RR. The costs associated with the CVP are allocated to the transmission and generation functions based on a ratio of transmission or generation plant to total plant.

CVP Firm and Non-Firm Point-to-Point

The provisional formula rate applies to CVP firm point-to-point (PTP) transmission service, existing CVP firm pre-OATT transmission service, and CVP non-firm transmission service. Under the provisional formula rate, the estimated rate for Component 1 for firm and non-firm PTP service effective October 1, 2011, is $1.31 per kilowatt (kW) month. This is a 26 percent increase from the April 1, 2011, CVP firm and non-firm PTP rate of $1.04 per kW month. The increase is primarily due to the anticipated completion of assets supporting the transmission function and not a formula rate methodology change. Both the existing formula rate and the provisional formula rate for CVP firm and non-firm PTP services are comprised of three components:

Component 1:

$$\frac{\text{CVP Transmission Revenue Requirement (TRR)}}{\text{Total Transmission Capacity (TTc)} + \text{Network Integration Transmission Service Capacity (NITSc)}}$$

Where:

CVP TRR = TRR is the cost associated with facilities that support the transfer capability of the CVP transmission system excluding generation facilities and radial lines.

TTc = The TTc is the total transmission capacity under long-term contract between Western and other parties.

NITSc = The NITSc is the 12-month average coincident peaks of Network Integrated Transmission Service (NITS) Customers at the time of the monthly CVP transmission system peak. For rate design purposes, Western's use of the transmission system to meet its statutory obligations is treated as NITS

This formula rate also contains Components 2 and 3.

The provisional formula rate for CVP transmission service is based on a RR that recovers: (1) The CVP transmission system costs for facilities associated with providing transmission service; (2) the non-facility costs allocated to transmission service; (3) O&M costs, cost of capital or interest expense, depreciation expense, and other miscellaneous costs associated with providing transmission services; (4) the cost for transmission scheduling, system control and dispatch service is included in O&M; (5) the pass through of FERC's or other regulatory bodies' accepted or approved charges or credits; (6) the pass through of the HBA's charges or credits; (7) any other statutorily-required costs or charges; and (8) any other costs associated with transmission service including uncollectible debt. Revenues from the sales of short-term, non-firm transmission will offset the TRR. Revenue from unreserved use of transmission penalties exceeding transmission service cost will be applied as an offset to the TRR.

The estimated rates resulting from the formula rate are subject to change prior to the rates taking effect. The rates will be finalized by Western on or before October 1, 2011.

CVP NITS

The NITS provisional formula rate applies to CVP NITS Customers. Effective October 1, 2011, the estimated monthly NITS RR is $2,247,754. This RR is a 26 percent increase from the April 1, 2011, monthly NITS RR of $1,783,441. The increase is primarily due to the anticipated completion of assets supporting the CVP transmission function and not a rate methodology change. Both the existing and provisional formula rates for this service are comprised of three components:

Component 1:

NITS customer's monthly demand charge = NITS customer's load ratio share $\times$ 1/12 of the Annual Network TRR.

Where:

NITS customer's load ratio share = The NITS customer's load, hourly, or in accordance with approved policies or procedures, (including behind the meter generation minus the NITS customer's adjusted BR) coincident with the monthly CVP transmission system peak, averaged over a 12-month rolling period, expressed as a ratio.

Annual Network TRR = The total CVP TRR less revenue from long-term contracts for

the CVP transmission between Western and other parties.

This formula rate also contains Components 2 and 3.

The provisional formula rate for CVP NITS is based on a RR that recovers: (1) The CVP transmission system costs for facilities associated with providing transmission service; (2) the non-facility costs allocated to transmission service; (3) O&M cost, cost of capital or interest expense, depreciation expense, and other miscellaneous costs associated with providing transmission service; (4) the cost for transmission scheduling, system control and dispatch service; (5) the pass through of FERC's or other regulatory bodies' accepted or approved charges or credits; (6) the pass through of the HBA's charges or credits; (7) any other statutorily-required costs or charges; and (8) any other costs associated with transmission service including uncollectible debt. Revenues from the sales of short-term, non-firm transmission will offset the TRR. Revenue exceeding cost from unreserved use of transmission penalties will also be applied as an offset to the TRR.

The estimated rates resulting from the formula rate are subject to change prior to the rates taking effect. The rates will be finalized by Western on or before October 1, 2011.

COTP PTP Transmission

The provisional formula rate applies to COTP PTP transmission service. A comparison of the estimated rates resulting from Component 1 of the provisional formula rate for COTP firm PTP transmission service to the existing COTP firm PTP transmission service rates are shown in the table below.

COMPARISON OF EXISTING RATES TO ESTIMATED PROVISIONAL RATES FOR COTP FIRM AND NON-FIRM PTP TRANSMISSION SERVICE

Season	Existing COTP rates FY 2011 $/MWh)	Estimated COTP rates FY 2012 ($/MWh)	Percent change (%)
Spring	$2.74	$2.70	(1.46)
Summer	2.73	2.69	(1.47)
Winter	2.77	2.72	(1.81)

The existing and provisional formula rate for COTP PTP transmission service consists of three components.

Component 1:

COTP TRR
Western's COTP Seasonal Capacity

Where:

COTP TRR = COTP Seasonal TRR (Western's costs associated with facilities that support the transfer capability of the COTP).

Western's COTP Seasonal Capacity = Western's share of COTP capacity (subject to curtailment) under the current COI transfer capability for the season. The three seasons are defined as follows: Summer–June through October; Winter–November through March; and Spring–April through May.

This formula rate also contains Components 2 and 3.

The estimated COTP PTP transmission service rate decreased despite a forecasted 3 percent O&M inflationary increase, because interest expense is forecasted to decrease. There is no formula rate methodology change.

The provisional formula rate for COTP firm and non-firm PTP transmission service is based on a RR that recovers: (1) The COTP transmission system costs for facilities associated with providing transmission service; (2) the non-facility costs allocated to transmission service; (3) O&M costs, interest expense, depreciation expense, and other miscellaneous costs associated with providing transmission services; (4) the cost of scheduling system control and dispatch service associated with COTP transmission; (5) the pass through of FERC's or other regulatory bodies' accepted or approved charges or credits; (6) the pass through of the HBA's charges or credits; (7) any other statutorily-required costs or charges; and (8) any other costs associated with transmission service including uncollectible debt.

The rates resulting from Component 1 of the provisional formula rate may be discounted for short-term sales and revenue from COTP unreserved use penalties. The estimated rates resulting from the provisional formula rate are subject to change prior to the rates taking effect. The last month of the summer seasonal rate (October) is in the new rate period. Western will publish a rate for October 2011 before September 15, 2011. The rates resulting from the provisional formula rate for the winter season will be finalized by Western on or before October 15, 2011, and effective November 1, 2011.

PACI PTP Transmission

The provisional formula rate applies to PACI firm and non-firm PTP transmission service. The estimated firm and non-firm PTP rates resulting from Component 1 of the provisional formula rate for PACI transmission service are shown below.

COMPARISON OF EXISTING RATES TO ESTIMATED PROVISIONAL RATES FOR PACI FIRM AND NON-FIRM PTP TRANSMISSION SERVICE

Season	Existing PACI rates FY 2011 $/MWh)	Estimated PACI rates FY 2012 ($/MWh)	Percent change
Spring	$1.21	$1.21	No change.
Summer	1.21	1.21	No change.
Winter	1.15	1.22	6.09

The existing and provisional formula rate for PACI transmission service consists of three components:

Component 1:

PACI TRR
Western's PACI Seasonal Capacity

Where:

PACI TRR = PACI Seasonal TRR includes Western's costs associated with facilities that support the transfer capability of the PACI.

Western's PACI Seasonal Capacity = Western's share of PACI capacity (subject to curtailment) under the current COI transfer capability for the season. The three seasons are defined as follows: Summer—June through October; Winter—November through March; and Spring—April through May.

This formula rate also contains Components 2 and 3.

The estimated PACI PTP transmission service rate remains unchanged, despite a 3 percent inflationary cost increase because of a forecasted decrease in interest expense. The change in the winter rate is due to actual costs exceeding forecasted costs. There is no formula rate methodology change.

The formula rate for PACI transmission service is based on a RR that recovers: (1) The PACI transmission system costs for facilities associated with providing transmission service; (2) the non-facility costs allocated to transmission service; (3) O&M costs, interest expense, depreciation expense, and other miscellaneous costs associated with providing transmission services; (4) the cost of scheduling system control and dispatch service associated with PACI transmission; (5) the pass through of FERC's or other regulatory bodies' accepted or approved charges or credits; (6) the pass through of the HBA's charges or credits; (7) any other statutorily-required costs or charges; and (8) any other costs associated with transmission service including uncollectible debt.

The rates resulting from Component 1 of the provisional formula rate may be discounted for short-term sales and revenue from PACI unreserved use penalties. The estimated rates resulting from the provisional formula rate are subject to change prior to the rates taking effect. The last month of the summer seasonal rate (October) is in the new rate period. Western will publish a rate for October 2011 before September 15, 2011. The rates resulting from the provisional formula rate for the winter season will be finalized by Western on or before October 15, 2011, and effective November 1, 2011.

Transmission of Western Power by Others

Effective October 1, 2011, the formula rate methodology for this service does not change from the existing methodology, and all costs are passed through under this rate schedule. The existing and provisional formula rates consist of three components:

Component 1: When Western uses transmission facilities other than its own in supplying Western power and costs are incurred by Western for the use of such facilities, the customer will pay all costs, including transmission losses incurred in the delivery of such power. This formula rate also contains Components 2 and 3.

These costs are fully recovered from the beneficiaries receiving this service, and there is no change in the existing formula rate methodology.

UUP

This is a new rate schedule effective on October 1, 2011, through September 30, 2016. The UUP service is provided when a transmission customer uses transmission service that it has not reserved or uses transmission service in excess of its reserved capacity. A transmission customer that has not reserved capacity or exceeds its firm or non-firm reserved capacity at any point of receipt or any point of delivery will be assessed UUP. The penalty will be assessed at 200 percent of the firm PTP applicable rate when transmission is used and not reserved except where noted in the rate schedule.

The provisional formula rate consists of three components:

Component 1: The penalty charge for a transmission customer who engages in unreserved use is 200 percent of Western's approved transmission service rate for PTP transmission service assessed as follows: (1) The UUP for a single hour of unreserved use will be based upon the rate for daily firm PTP service; (2) the UUP for more than one assessment for a given duration (*e.g.,* daily) will increase to the next longest duration (*e.g.,* weekly); and (3) the UUP for multiple instances of unreserved use (*e.g.,* more than 1 hour) within a day will be based on the rate for daily firm PTP service. The penalty charge for multiple instances of unreserved use isolated to one-calendar week would result in a penalty based on the charge for weekly firm PTP service. The penalty charge for multiple instances of unreserved use during more than one week within a calendar month is based on the charge for monthly firm PTP service.

The UUP will not apply to transmission customers utilizing PTP transmission service under Western's OATT as a result of action taken to support reliability. Such actions include reserve activations or uncontrolled event response as directed by the responsible reliability authority such as Sub-Balancing Authority (SBA), HBA, Reliability Coordinator, or Transmission Operator.

A transmission customer that exceeds its firm or non-firm reserved capacity is required to pay for all ancillary services

identified in Western's OATT associated with the unreserved use of transmission service. The transmission customer or eligible customer will pay for ancillary services based on the amount of transmission service it used but did not reserve. No penalty will be applied to the ancillary service charges.

This formula rate also contains Components 2 and 3.

The provisional rate recovers the cost of transmission and applies a penalty for such unreserved use. The revenue resulting from the penalty portion will be distributed as a credit to the relevant TRR. The penalty rate is applicable for all unreserved use of transmission and transmission in excess of reservation except, as may be determined by Western; for example, in emergencies or reserve sharing activations.

D. Ancillary Services

This section includes provisional formula rates for the following ancillary services: spinning reserve, supplemental reserve, regulation and frequency response, EI, and GI. Western's costs for providing transmission scheduling, system control and dispatch service, and reactive supply and voltage control are included in the appropriate transmission or BR and FP power formula rates.

Provisional formula rates are not changing from existing rate methodologies, except where noted. GI is a new service effective October 1, 2011. As it pertains to ancillary services rate schedules, in order to encourage good scheduling practices, Western is adopting the 150 percent penalty on actual cost in addition to the existing 150 percent penalty on market price, and will assess the greater of the two. The penalty will be applicable to the following rate schedules: (1) EI service; (2) GI service; (3) regulation and frequency response penalty for non-performance of self provision; (4) spinning reserve penalty portion for non-performance; and (5) supplemental reserve penalty portion for non-performance. Also, any costs incurred under EI/GI when disposing of surplus energy, including negative pricing, will be assessed to the responsible party. Finally, to the extent that an entity incorporates intermittent resources, Western will eliminate the 150 percent penalty; and Western will charge the greater of the CAISO market price or Western's actual cost.

Spinning Reserve Service

Western is not proposing a change to the existing formula rate methodology for spinning reserve service, with the exception of the penalty for non-performance, which will be charged the greater of 150 percent of market or 150 percent of actual cost.

The spinning reserve charge is calculated for each hour during the month in order to derive the total monthly charge. The provisional formula rate for spinning reserve service is comprised of three components as follows:

The formula rate for spinning reserve service is the price consistent with the CAISO's market plus all costs incurred as a result of the sale of spinning reserves, such as Western's scheduling costs.

For customers that have a contractual obligation to provide spinning reserve service to Western and do not fulfill that obligation, the penalty for non-performance is the greater of 150 percent of Western's actual cost or 150 percent of the market price.

This formula rate also contains Components 2 and 3.

The provisional rate formula includes: (1) A price consistent with the CAISO's market price; (2) all costs incurred as a result of the sale of spinning reserves, such as Western's scheduling costs; (3) the cost of energy, capacity, or generation that supports spinning reserve service; (4) the pass through of FERC's or other regulatory bodies' accepted or approved charges or credits; (5) the pass through of the HBA's charges or credits; and (6) any other statutorily-required costs or charges. For customers that have a contractual obligation to provide spinning reserve service to Western and do not fulfill that obligation, the penalty for non-performance is the greater of 150 percent of actual cost or 150 percent of the CAISO market price.

The cost for spinning reserve service required to firm CVP generation for the current hour and the following hour is included in the PRR. Any surplus spinning reserves may be sold at prices consistent with the CAISO market price. Revenues from the sale of surplus spinning reserves will offset the PRR. The spinning reserve formula rate will apply to SBA Customers who contract with Western to provide this service.

Supplemental Reserve Service

Western is not proposing a change to the existing formula rate methodology for supplemental reserve service, except for customers that have a contractual obligation to provide supplemental reserve service to Western and do not fulfill that obligation, the penalty for non-performance will be charged the greater of 150 percent of market or 150 percent of actual cost.

The formula rate for supplemental reserve service is comprised of three components as follows:

Component 1: The formula rate for supplemental reserve service is the price consistent with the CAISO's market plus all costs incurred as a result of the sale of supplemental reserves such as Western's scheduling costs. For customers that have a contractual obligation to provide supplemental reserve service to Western and do not fulfill that obligation, the penalty for non-performance is the greater of 150 percent of Western's actual cost or 150 percent of the CAISO market price. This formula rate also contains Components 2 and 3.

The provisional rate formula includes: (1) A price consistent with the CAISO's market price; (2) all costs incurred as a result of the sale of supplemental reserve service such as Western's scheduling costs; (3) the cost of energy, capacity, or generation that supports supplemental reserve service; (4) the pass through of the HBA's charges or credits; (5) the pass through of FERC's or other regulatory bodies' accepted or approved charges or credits; and (6) any other statutorily-required costs or charges.

For customers that have a contractual obligation to provide supplemental reserve to Western and do not fulfill that obligation, the penalty for non-performance is equal to the greater of 150 percent of actual cost of generation or 150 percent of the CAISO market price.

The cost for supplemental reserves required to firm CVP generation for the current hour and the following hour is included in the PRR. Any supplemental reserves may be sold at prices consistent with the CAISO market price. Revenues from the sale of supplemental reserves will offset the PRR. The supplemental reserve service formula rate will apply to SBA Customers who contract with Western to provide this service.

Regulation and Frequency Response Service

Western is not proposing a change to the existing formula rate methodology with the exception of the self-provision penalty, which will be charged the greater of 150 percent of actual or 150 percent of market price. The regulation rate effective April 1, 2011, was $4.33 per kWmonth. The rate effective during the FY 2012 rate period under the provisional formula rate is estimated at $4.05 per kWmonth. The forecasted rate decrease is primarily due to the anticipated completion of assets supporting transmission, which results in a decrease to cost of regulation, other

factors being equal. The provisional formula rate for this service is comprised of three components.

Component 1:

Annual Revenue Requirement
Annual Regulating Capacity (kW)

The annual RR includes: (1) The CVP generation costs associated with providing regulation, and (2) the non-facility costs allocated to regulation.

The annual regulating capacity is one-half of the total regulating capacity bandwidths provided by Western under the interconnected operations agreements with SBA members.

The penalty for non-performance by an SBA customer who has committed to self-provision for their regulating capacity requirement will be the greater of 150 percent of Western's actual costs or 150 percent of the CAISO market price.

Western will revise the formula rate resulting from Component 1 based on either of the following two conditions: (1) Updated financial data available in March of each year, or (2) a change in the numerator or denominator that results in a rate change of at least $0.25 per kW month. This formula also includes Components 2 and 3.

This provisional formula rate for regulation and frequency response is based on an annual RR that recovers: (1) The CVP generation costs associated with providing regulation; (2) the non-facility costs allocated to regulation; (3) O&M costs, interest expense, depreciation expense, and other miscellaneous costs; (4) the pass through of FERC's or other regulatory bodies' accepted or approved charges or credits; (5) the pass through of the HBA's charges or credits; (6) any other statutorily required costs or charges; and (7) any other costs associated with transmission service including uncollectible debt.

The regulation RR will be recovered from SBA Customers that have contracted with Western for this service. To the extent that an entity incorporates variable resources, treatment of such will be determined in the associated interconnected operations agreement contract. The revenues from regulation service will be applied to the PRR. The estimated regulation RR resulting from the provisional formula rate is subject to change prior to the rate taking effect for FY 2012. The regulation RR will be finalized by Western on or before October 1, 2011.

To the extent that an entity incorporates intermittent resources, treatment of such will be determined in the associated contract.

EI Service

Western is not proposing a change to the existing formula rate methodology with the exception that: (1) The EI charge will be the greater of 150 percent of market or 150 percent of actual cost for under-deliveries outside the bandwidth, and (2) any costs incurred under EI when disposing of surplus energy, including negative pricing, will be assessed to the responsible party. Any changes to EI charges result from changes to actual cost or market prices. The provisional rate for EI services is comprised of three components:

Component 1:

EI service is applied to deviations as follows: (1) For deviations within the contractual bandwidth, there will be no financial settlement unless otherwise dictated by contract or policy, rather, EI will be tracked and settled with energy; (2) negative deviations (under-delivery), outside the deviation bandwidth, will be charged the greater of 150 percent of market price or 150 percent of Western's actual cost; and (3) positive deviations (over-delivery) outside the deviation bandwidth will be lost to the system, except for any hour where Western incurs a cost, then that cost will be borne by the responsible party.

Deviations that occur as a result of actions taken to support reliability will be resolved in accordance with existing contractual requirements. Such actions include reserve activations or uncontrolled event responses as directed by the responsible reliability authority, such as SBA, HBA, RC, or TOP. The formula rate also contains Components 2 and 3.

Western will maintain its existing tiered methodology for EI as defined by contractual agreements. While FERC Order No. 890 defines a three-tier methodology, it allows alternatives to the design if the rate schedule follows the intent of these principles: (1) Charges based on incremental cost or some multiple thereof, and (2) charges must provide incentive for accurate scheduling.

Western's existing EI rate schedule follows FERC's intent as follows: (1) For deviations within the bandwidth, energy is returned; for deviations outside the bandwidth, over-deliveries are lost to the system; and under-deliveries are charged the greater of 150 percent of the CAISO market price or 150 percent of Western's actual cost, and (2) Western charges penalties outside the bandwidth as an incentive for good scheduling practices.

Given that Western's customers will be operating under existing agreements during the applicable rate period, Western will revisit FERC Order No. 890's approach as well as Western's existing settlements and billing processes and will consider a transition to FERC's methodology during Western's next rate process or earlier if deemed appropriate.

Accordingly, for deviations outside of the bandwidth, the EI service charge is recovered using the greater of 150 percent of the CAISO market price or 150 percent of Western's actual cost. The actual cost is calculated using CVP generation RR and associated energy. Additional costs subject to recovery include HBA's charges or credits, FERC's or other regulatory bodies' accepted or approved charges or credits, and any other statutorily required costs or charges.

The EI service charge will be recovered from SBA Customers that have contracted with Western for this service. Since the actual cost is calculated based on Western's cost of generation, it is subject to change prior to the effective rate period.

Below is an example of how the EI charge is calculated using Component 1:

EI Charge Example Calculation (Component 1)

On October 1, HE 1, Customer A has:	
Scheduled Net Interchange	90 MW
Actual Net Interchange	102 MW
Actual Energy in excess of Scheduled Energy.	12 MW
Contractual Bandwidth	8 MW
EI for HE 1	4 MW

To derive the total monthly charge for Customer A, the EI is calculated for each hour that it occurs during the month.

The EI charge is based upon a comparison between the real-time energy pricing from the CAISO for each hour and Western's actual cost, both multiplied by 150 percent, for that same hour. The higher of the two is applied to derive the EI charge. Therefore, the EI

charge for October 1, HE 1, is calculated as follows:

October 1, hour ending 1	Price	Price comparison	MW	Charge
Western's Calculated Actual Cost ($18.27 × 150%) applied per rate schedule.	$27.40	150% Actual < 150% of Market	N/A	N/A
Real-Time CAISO price ($21.84 × 150%) applied per rate schedule.	32.76	150% Market > Actual	4	$131.04

Note: EI charge for October 1, HE 1, is calculated as follows: 4 MW × $32.76 = $131.04.

Imbalances that occur as a result of action taken by the generator, at Western's request, to support reliability will not be subject to penalties. Such actions include directives by SBA, HBA, Reliability Coordinators, or reserve activations and frequency correction initiatives.

Service

This is a new rate schedule effective on October 1, 2011, through September 30, 2016. Western is proposing to adopt its existing EI formula rate methodology for GI. The provisional rate for this service is comprised of three components:

Component 1: GI is applied to deviations as follows: (1) For deviations within the bandwidth, there will be no financial settlement, unless otherwise dictated by contract; rather, GI will be tracked and settled with energy; (2) negative deviations (under-delivery), outside the deviation bandwidth, will be charged the greater of 150 percent of market price or 150 percent of Western's actual cost; and (3) positive deviations (over-delivery), outside the deviation bandwidth, will be lost to the system, except for any hour where Western incurs a cost, then that cost will be borne by the responsible party.

Deviations that occur as a result of actions taken to support reliability will be resolved in accordance with existing contractual requirements. Such actions include reserve activations or uncontrolled event responses as directed by the responsible reliability authority such as SBA, HBA, Reliability Coordinator, or Transmission Operator.

To the extent that an entity incorporates intermittent resources, deviations will be charged the same as defined above except for negative deviations outside the bandwidth (under-delivery) will not be charged the penalty, only the greater of actual cost or market price. Intermittent generators serving load outside of SNR's SBA will be required to dynamically schedule or dynamically meter their generation to another BA. An intermittent resource for the limited purpose of these rate schedules is an electric generator that is not dispatchable and cannot store its output, and therefore, cannot respond to changes in demand or respond to transmission security constraints.

This formula rate also contains Components 2 and 3.

Similar to EI, FERC Order No. 890 defines a three-tier methodology for GI. The order allows alternatives to designs if the rate schedule follows the intent of the three principles: (1) Charges are based on incremental cost or some multiple thereof; (2) charges must provide incentives for good scheduling practices; and (3) provisions should address intermittent renewable resources (wind/solar) and waive punitive penalties.

Similar to Western's existing EI rate schedule, GI will follow FERC intent by: (1) Establishing a tiered methodology; within the bandwidth, energy is exchanged, over-deliveries are lost to the system, and under-deliveries are charged the greater of 150 percent of the CAISO market price or 150 percent of Western's actual cost; (2) penalties outside the bandwidth also provide incentives for good scheduling practices; and (3) to the extent that an entity incorporates intermittent resources, Western will eliminate the 150 percent of market price and actual cost factor for under-deliveries and will charge the greater of market price or Western's actual cost.

Currently, Western has no existing customers subject to GI. Western will revisit FERC Order No. 890's approach as well as Western's existing settlements and billing processes and will consider a transition to FERC's methodology during Western's next rate process or earlier if deemed appropriate.

Accordingly, for deviations outside of the bandwidth, the GI charge is recovered using the greater of 150 percent of the market price or 150 percent of Western's actual cost. The actual cost is calculated using CVP generation RR and associated energy. Additional costs subject to recovery include: (1) HBA's charges or credits; (2) FERC's or other regulatory bodies' accepted or approved charges or credits; and (3) any other statutorily required costs or charges.

The GI charge will be recovered from SBA Customers that have contracted with Western for this service. Since the actual cost is calculated based on Western's cost of generation, it is subject to change prior to the effective rate period.

Below is an example of how the GI charge is calculated using Component 1.

GI Service Charge Example Calculation (Component 1)

If, on October 1, HE 1, Customer A has:	
Scheduled Net Interchange	102 MW
Actual Net Interchange	90 MW
Scheduled Generation in excess of Actual Generation (under-delivery).	12 MW
Contractual Bandwidth	8 MW
GI for HE 1	4 MW

To derive the total monthly charge for Customer A, the GI is calculated for each hour that it occurs during the month. The GI charge is based upon a comparison between the real-time energy pricing from the CAISO for each hour and Western's actual cost, both multiplied by 150 percent, for that same hour. The higher of the two is applied to derive the GI charge.

The following table is an example of how Western determines the GI charge related to the GI in the table above:

October 1, hour ending 1	Price	Price comparison	MW	Charge
Western's Calculated Actual Cost ($18.27 × 150%) applied per rate schedule.	$27.40	150% of Actual < 150% of Market.	N/A	N/A

October 1, hour ending 1	Price	Price comparison	MW	Charge
Real-Time CAISO price ($21.84 × 150%) applied per rate schedule.	$32.76	150% Market > Actual	4	$131.04

Note: GI charge for October 1, HE 1 is calculated as follows: 4 MW × $32.76 = $131.04.

GI charges will not apply as a result of action taken to support reliability. Such actions include reserve activations or uncontrolled event response as directed by the responsible reliability authority, such as SBA, HBA, Reliability Coordinator, or Transmission Operator.

To the extent that an entity incorporates intermittent resources, treatment of such will be determined in the associated contract.

Relationship between EI and GI

EI and GI service charges and energy accounting will be netted within the hour, or in accordance with approved procedures, with charges for both services allowable only when the imbalances for both are deficit, rather than offsetting—one deficit and one surplus. **Note**—this only applies to netting within the bandwidth.

EXAMPLE OF RELATIONSHIP BETWEEN EI AND GI

Transmission Provider or SBA can charge customers for both EI and GI service in the same hour, but not if the imbalances offset each other.

Example of Offsetting:

- For example—Customer A
  - >> GI: −10 MW deficit
  - >> EI service: 5 MW surplus
  - >> Customer A charged: 5 MW (GI charge)

Example of Aggravating (increasing—absolute value)

EXAMPLE OF RELATIONSHIP BETWEEN EI AND GI—Continued

- For example—Customer B
  - << GI Service: −10 MW deficit
  - << EI service: −10 MW deficit
  - << Customer A charged: −10 MW for GI charge plus −10MW for EI charge

Statement of Revenue and Related Expenses

The following table provides a summary of projected revenues and expenses for the rates through the 5-year provisional rate approval period. The table includes comparison of existing rate data to estimated rate data and the difference.

SUMMARY TABLE OF REVENUES AND EXPENSES

Rate Recovery CVP, COTP, and PACI—5-Year Rate Comparison Existing (FY 2006–FY 2010) to Provisional Rate Period (FY 2012–FY 2016)
Total Revenue and Expenses (in thousands)

Revenue or Expense Category	Existing Rate Period FY 2006–FY 2010	Provisional Rate Period FY 2012–FY 2016	Differences
Total Revenue	$1,563,274	$1,955,569	$392,295
.....	.....	.....	.....
Revenue Distribution.			
Expenses:			
O&M	411,204	496,505	85,301
Purchase Power & Transmission	875,402	1,180,215	304,812
Interest Expense	26,371	50,881	24,510
Other Expense (inc. wheeling)	177,817	173,331	(4,486)
Total Expenses	1,490,794	1,900,931	410,137
Principal Payments:			
Capitalized Expenses (deficits)	4,890	0	(4,890)
Original Project and Additions	51,075	52,644	1,569
Replacements	14,521	0	(14,521)
Aid to Irrigation	0	0	0
Power Rights	1,994	1,994	0
Total Principal Payments	72,480	54,638	(17,842)
Total Revenue Distribution	1,563,275	1,955,569	392,294

Basis for Rate Development

The existing formula rate methodologies expire on September 30, 2011. Western considered all comments received during its public consultation and comment period. The comments and responses, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters or the public comment forum are used for clarity where necessary. The comments and responses discussed below are: (1) BR and FP power; (2) CVP transmission; (3) ancillary services; and (4) other comments. Also, questions received from customers during the public consultation and comment period were answered and resolved and are not discussed below. Those questions and responses are posted at Western's Web site located at: *http://www.wapa.gov/sn/marketing/rates/ratesProcess/formalProcess/CIL2011/index.asp.*

Several customers expressed appreciation for Western's efforts during the comprehensive informal and formal rate process and support maintaining the existing formula rate methodologies.

BR and FP Power Comments

A. *Comment:* During the formal process, the FP Customers stated Western should consider the following in its final rate filing: (1) Perform a FP percentage true-up each year; (2) maintain a maximum percentage

threshold; (3) any increases at midyear be collected over remaining months of the FY versus collected in one month; (4) include a requirement that Western consider input from FP Customers prior to publishing percentages; (5) provide an explanation for any difference between FP and PU payment obligation; and (6) provide customers with advance notice (6 months to 1 year) if changes to maximum percentages are anticipated.

Response: Western considered customer comments and is adopting a true-up methodology for FP Customers each year in order to ensure FP Customers pay their proportionate share of the PRR. The FP percent true-up calculation will be based on actual data for the FY being adjusted. Changes to PRR based on FP percentage true-up calculations will be incorporated in the PRR at the beginning of each FY as shown in the example below, and will be applied to both FP and BR Customers to ensure full cost recovery of the PRR. As shown in Table 1, the total PRR for Year 1, as published on October 1, is $75,000,000, and the estimated payment is allocated to customers based on their estimated FP and BR percentages. Following a true-up of FP percentages in Year 2, the difference between estimated and actual will be reflected in the PRR in Year 3.

TABLE 1—ESTIMATED AND ACTUAL YEAR 1 PRR ALLOCATION DUE TO FP % TRUE-UP

FP Customer	Year 1 FP % (based on estimate)	Year 1 FP and BR PRR allocation	Year 1 actual FP % (determined during year 2)	Year 1 FP and BR actual (adjusted) PRR allocation	Difference (applied in year 3)
Customer A	0.35%	$262,500	0.38%	$285,000	$22,500
Customer B	0.90%	675,000	0.85%	637,500	(37,500)
Customer C	2.80%	2,100,000	2.90%	2,175,000	75,000
Customer D	0.75%	562,500	0.75%	562,500	0
Total	4.80%	3,600,000	4.88%	3,660,000	60,000
BR Customers	Contractual %	71,400,000	Contractual %	71,340,000	(60,000)
Total PRR (Year 1)		75,000,000	Total PRR	75,000,000	0

Beginning in Year 3, the PRR, as published on October 1, is $73,000,000. Based on the true-up methodology, the adjustment (difference seen in Table 1) from Year 1 is factored in the PRR for Year 3, and payment obligations for both FP and BR Customers are appropriately adjusted as shown in the Table 2 below.

TABLE 2—FP % ADJUSTMENT FROM YEAR 1 (ACTUAL TO ESTIMATED PAYMENT) APPLIED IN YEAR 3

FP Customer	Year 3 est. FP %	Year 3 estimated PRR payment	PY FP true-up (Year 1 true-up amount)	Total year 3 bill
Customer A	0.35%	$255,500	$22,500	$278,000
Customer B	0.90%	657,000	(37,500)	619,500
Customer C	2.85%	2,080,500	75,000	2,155,500
Customer D	0.77%	562,100	0	562,100
Total	4.87%	3,555,100	60,000	3,615,100
BR Customers	Contractual %	69,444,900	(60,000)	69,384,900
Total PRR (Year 3)		73,000,000	0	73,000,000

Based on the true-up adjustment from Year 1, the PRR is appropriately allocated to both FP and BR Customers in Year 3.

Western will continue to: (1) Maintain its maximum percentage methodology so that during periods of low hydrology there is limited PRR financial obligation for FP Customers; (2) collect costs from changes at midyear over remaining months in FY; and (3) maintain its current communication procedures including receiving input during development of percentages. Western currently notifies and receives input from the FP Customers when developing the FP percentages prior to finalizing the FP percentage at the start of the FY and during the midyear FP percentage review. Western intends on continuing with this communication effort. Western is adopting a true-up for the FP Customers' allocation of the PRR; therefore, the FP Customers will pay their proportionate share of the PRR up to the maximum FP percentage. Western is changing the language in the BR and FP power rate schedule to reflect the annual FP true-up procedure. Also, according to current policy, FP maximum percentages are established once at the beginning of each 5-year rate adjustment period, and generally do not change. While changes are not anticipated, if Western deems a review of the FP Customers' maximum percentage appropriate, Western will notify the customers. Finally, as discussed during informal rate meetings, while both FP and PU load obligations are statutory, cost recovery obligations vary. Western, in concert with Reclamation and customers, established a cost recovery policy for PU, namely, the PU cost sub-allocation methodology, and recovers PU costs annually. Alternatively, FP Customers' cost recovery methodology was established through Western's rate adjustment procedures. Further, FP Customers are power customers and more closely aligned with Western's Preference Customers than Reclamation's water customers.

B. *Comment:* A customer suggested that Western consider publishing the final PRR by September 15, rather than by September 30, to aid customers in their budgeting process.

Response: Western's PRR developed prior to the start of each FY is dependent on the timing and receipt of other data that impacts the PRR, such as transmission and regulation RRs, FP load projections, power purchases, and other financial or operational data. Western may require time beyond September 15 to finalize the PRR and other rates. In response to customers' budgeting needs, Western plans to publish a PRR forecast during May of each year to provide rate information to customers for budgeting and other purposes. Additionally, Western will continue to strive for rate stability and predictability. While Western will attempt to publish the PRR by September 15, it will maintain its current publication date of September 30. There will be no change to the rate schedule.

C. *Comment:* Several customers suggested that Western establish a trigger or safety valve in the formula rate to defer or terminate costs when Western's rates are uneconomic due to extended periods of low generation or operational constraints.

Response: Western has a statutory obligation to recover its costs within certain prescribed periods. Western also ensures its costs are the lowest cost possible consistent with sound business principles. Additionally, Western continues to strive for rate stability. Western's recent PRR forecast exhibits stable, level rates. From the comments, Western understands the customer rate volatility is primarily driven by Reclamation's Restoration Fund costs, hydrology, market conditions, pumping or biological restrictions, or other factors outside of Western's control. While these items are outside the scope of the rate process, Western understands the customers' position that if the project becomes uneconomic due to these types of external factors, project repayment could be impacted. Deferring Western's costs from one period to a future period or periods, however, introduces external and unpredictable volatility to an otherwise stable PRR. Additionally, generation triggers are not fully known until the April-through-June time frame; therefore, a change to an annual PRR could not be perfected until as late as June creating cash-flow concerns. Western previously responded to customers' concerns to align power recovery more closely with generation by billing 75 percent of the BR RR in the period where the most benefit is received. Finally, while the factors discussed above are outside of Western's control, Western will continue to work with other agencies, when possible, in an attempt to address the factors, such as working with Reclamation in an effort to stabilize the Restoration Fund. Given legal and policy constraints and the fact the decisions are made by other agencies, outside factors or markets, Western cannot guarantee any outcomes.

D. *Comment:* Several customers suggested that the HE program should be adjusted annually based on a formula (PRR/forecasted BR) with a true-up provision.

Response: Western's current HE methodology ensures the cost of BR and HE energy is valued the same in the month the energy is used. Valuing the HE energy based on derived annual costs and BR energy based on derived monthly costs creates inequities for energy in similar periods. Western's analysis of the customers' proposal revealed that assessing HE monthly, rather than yearly, has a cumulative minimal monetary effect. The HE program is voluntary, and Western will continue to support the program in the current form.

E. *Comment:* A customer suggested the HE program should be allocated 50 percent on the number of participants and 50 percent on BR percentage.

Response: As Western stated in comment D above, valuing the HE energy differently than BR energy creates inequities. Currently, in accordance with Western's BR contracts, HE is generally allocated 100 percent based on the number of participants. Here, a customer requested a change to the HE program allocation methodology, which is contractual and not part of the rate process. The HE program is voluntary, and Western will continue to support the program in the current form.

F. *Comment:* A customer commented that Western should clarify the general power contract provision (GPCP) 11 meaning of ''date of a rate change'' and if it allows a preference customer to terminate its Federal power allocation each time a new PRR is developed and implemented.

Response: While GPCPs are outside the scope of the rate process, GPCP 11 is intended to provide an opportunity to allow a customer to terminate a contract when Western adjusts the rates through the formal rate adjustment proceedings. A rate adjustment is defined by regulation. The regulations state that a change in a monetary charge that results from a formula is not a rate adjustment.

G. *Comment:* Several customers' suggested the VR scheduling charge increase should be based on actual costs versus the set 3 percent per year increase.

Response: Western considered customers comments and re-analyzed its VR scheduling charge rate development and confirmed that its results are still valid for the rate period. Western's O&M expense for the period of 2005 through 2010 increased, on average, 4 percent annually. Western's O&M for the relevant rate period is expected to increase 3 percent annually, partially because FY 2011 and FY 2012 have no cost-of-living adjustments to payroll. The prospective annual rate and cost recovery for this service totals approximately $30,000. A 3 percent inflationary increase on $30,000 is $900. Because the VR scheduling charge is primarily driven by labor costs, Western believes its charge is supported by history and future projections, and outweighs the cost of performing annual adjustments.

H. *Comment:* A customer commented that Scheduling Coordinator (SC) and Portfolio Management (PM) charges for Full Load Service Customers should be reviewed and adjusted annually based on actual costs.

Response: The SC and PM charges are established in the scheduling coordinator and FLS contracts and are outside the scope of this public process. However, to provide clarity on these comments, when Western revised the SC and PM charges, it performed an in-depth analysis that considered all of the elements that contribute to the cost of providing SC and PM services. Findings from, and an explanation of the methodology used to conduct the study, were presented to the customers at the October 29, 2009, Informal Rates meeting. At that meeting, Western stated costs for performing its CVP legislative and statutory requirements and scheduling those requirements are appropriately included in O&M. The information presented at the meeting showed that Western's cost for providing the necessary SC and PM services as related to meeting these requirements are paid for by all of the CVP power customers. The costs for providing additional and separate SC and PM services are paid for by those entities requesting such services, at no additional cost to other CVP power customers.

As discussed in the October 29, 2009, Informal Rates meeting, Western did increase future SC and PM rates for inflation and salary increases and committed to review the charges on an ongoing basis.

CVP Transmission Comments

I. *Comment:* A customer commented that Western should waive UUP for unscheduled use of the system related to a contingency event, such as reserve activation, and clarify in the appropriate rate schedule to protect reserve sharing agreements.

Response: Western exempts the assessment of UUP to customers for actions taken by Western to support reliability, such as reserve activations or an uncontrolled event response. Reserve activation from reserve sharing agreements in response to a said event will be exempt from UUP. However, an exemption from the assessment of UUP does not relieve customers from paying for unscheduled or unreserved transmission and ancillary services, if used.

J. *Comment:* Several customers commented that Western's transmission cost allocation methodology, as it relates to the Sacramento Area Voltage Support (SVS) Project, is unreasonable and Western should consider: (1) Allocating costs based on proportional benefits; (2) allocating costs using incremental pricing; (3) allocating costs directly to beneficiary; or (4) excluding costs from rates.

Response: Western considered the customers' comments, reviewed its rate methodology and alternatives, and determined that its existing and provisional cost allocation methodology is consistent with Western's statutory rate recovery obligations. Western began planning, in collaboration with its customers, to mitigate the diminishing reliability operation margins of its transmission network in the Sacramento region as early as 2001. As part of Western's SVS Program Draft Supplemental Environmental Impact Statement, Western identified the purpose and need for the SVS Project. Western's CVP transmission system is affected by voltage stability, reliability, and security of the greater Sacramento-area transmission system. The transmission studies performed in 2006 and 2007 continued to show that the existing transmission lines in the greater Sacramento area had reached their maximum power transfer limits. As a result, load-serving entities and utilities in the area have taken interim measures to avoid potential uncontrolled system-wide outages; however, in an effort to avoid load shedding and potential rotating blackouts and in order to ensure the continued reliable operation of Western's system and to meet its contractual and statutory obligations, Western determined it was necessary to construct the SVS Project.

During the informal rate process, Western engaged customers and sought input and comments regarding its formula rates. Additionally, during the June 25, 2010, Informal Rates meeting, Western provided a forecast of its transmission rates based on currently planned and funded projects. Western also published on its Open Access Same Time Information System (OASIS) and Rates Web site, transmission rate forecasts on May 20, 2010, and November 22, 2010, to include the rate impact of the SVS and other transmission projects.

The SVS Project is a network upgrade, as defined under Western's OATT, for the continued reliable operation and support of Western's CVP transmission system; and, as a result, all of Western's network customers receive benefits from the SVS Project. Western's existing and provisional formula rate methodologies are the same and allocate network upgrade costs to Western's transmission customers based on system usage and reserved capacity. Therefore, in this case the application of incremental pricing or other pricing methodology for the SVS Project is inappropriate. Further, Western cannot exclude the costs of the SVS Project from its rates. Unless specifically authorized by Congress, Western must recover all of its costs. Western does not have Congressional authority to exclude the costs of SVS, and Western must recover those costs.

As part of the formal rate process, Western gave the customers an opportunity to provide any information on other authorities that would allow Western to capture transmission costs for a single facility under both embedded costs and incremental costs or under an alternative methodology. While Western develops its rates under DOE orders and is not bound by pricing policies of others, Western believes it is important to understand other authorities, such as FERC policies, and evaluate them.

One customer commented that pursuant to FERC's June 17, 2010, Notice of Proposed Rulemaking (NOPR),[31] FERC now requires that cost be allocated roughly in proportion to benefits. Under the NOPR, the customer implied that if a customer receives no benefits from a network upgrade, the customer should not be allocated any costs for the network upgrade or at least, the customer only should be allocated costs in proportion to the benefits. While Western appreciates the customer's research into the matter, Western is concerned about adopting a pricing methodology that would allocate specific network upgrade costs commensurate to individual benefits. Such an approach would be difficult and costly to administer. Under such an approach, any customer could argue the benefits it receives are not commensurate to its costs. Such an approach could require Western to evaluate each and every line and determine how much each and every customer benefits. The process would require Western to determine how to allocate the costs for reliability benefits. Furthermore, it becomes difficult to determine, over time, which users benefit from which upgrades. Some upgrades are made possible by others—some are required because of others. Western also recognizes the limitations of establishing rate-making policy based on a NOPR, which is not yet final. In some instances, FERC's final decision has varied from its NOPR. Because of the uncertainties associated with utilizing a benefit pricing model at this time, Western does not believe it is prudent to adopt such a model.

Western also evaluated the ''and'' pricing model suggested by earlier comments. Western does not believe it is equitable to charge both the embedded cost and incremental cost to certain users of the grid. Such a pricing policy would place an undue and discriminatory burden on a small group of customers.

One customer referencing Western's OATT, Attachment P, stated that Western has the ability to allocate costs of new transmission on a case-by-case basis. Western's OATT, Attachment P, sets forth the provisions for cost allocation related to transmission planning and not transmission rates. Western remains committed to an open and transparent transmission planning process.

For the reasons discussed above, Western believes the application of incremental transmission pricing or other transmission pricing methodology recommended by customers for the SVS Project is inappropriate at this time and will not implement either.

K. *Comment:* Western should reflect the full 270 MW of incremental capacity for SVS in its rate.

Response: As stated in Western's response on February 23, 2011, Western estimated 126 MW of new transmission capacity from SVS for the purpose of forecasting its 2012 rate. The actual capacity would be based on Western's system study results at the time the SVS Project became commercially operational and, subsequently, be used

[31] *See* Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 131 FERC ¶ 61,253 (2010).

in determining the effective rate under the provisional transmission formula rate. Study results completed in April 2011 indicated that 165 MW of additional transfer capability into the Sacramento area would be available; therefore, 165 MW will be used in calculating Western's forecasted CVP transmission rate.

L. *Comment:* A customer stated that it receives no benefit from the network upgrade and further requested clarification of the extent to which the transmission upgrade will reduce or eliminate the need for Western to rely on Sutter Energy Center (Sutter) for voltage support.

Response: Western's transmission customers benefit from the addition of network upgrades that improve reliable operation of the network. As described in the response to Comment ''J'' above, Western constructed the SVS Project as a network upgrade to ensure the continued reliable operations of the CVP Federal transmission system. The SVS Project will also reduce the reliance upon remedial action schemes (RAS) (including the RAS for Sutter). Sutter's obligation to provide voltage support as a function of NERC/WECC reliability requirements will not change as a result of the SVS transmission project.

M. *Comment:* A customer commented that intermittent resources should not degrade or compromise existing reliability of the CVP; additions or integration of renewable resources should be fully studied and costs should be appropriately allocated. Additionally, customers requested Western involve all rate payers on all proposed future expansion of CVP transmission network.

Response: Western agrees intermittent resources should not degrade or compromise the reliability of the CVP. Western's future transmission planning processes are outside the scope of this process. Western's OATT, Attachment P, delineates Western's transmission planning process. Western reminds its customers and others that Western typically holds quarterly transmission meetings, prepares and presents its 10-year transmission plan annually, and posts meeting notifications, documents, and plans on its OASIS at *http://www.oatioasis.com/wasn/index.html.* As intermittent resource entities request interconnection to Western's system, Western incorporates such requests into its process and ensures costs are appropriately allocated.

Ancillary Services Comments

N. *Comment:* A customer suggested that Western apply 150 percent penalty to market and actual cost rather than just market cost for deviations outside the bandwidth for EI, GI, and when customers self-provide but fail to perform for spinning and supplemental reserves and regulation, respectively.

Response: Western agrees with the customer's suggestion that the 150 percent penalty should be applied to both the market price and Western's actual cost. Currently, Western applies the 150 percent penalty on the market price only and is adopting the 150 percent penalty for the actual cost. Without a penalty on Western's actual cost, there is no penalty. Because the penalty is intended to incent good scheduling, or encourage customers with a requirement to self-provide ancillary services to perform their obligation, Western concluded the penalty should also apply to its actual cost. This will be applicable to the following rate schedules: (1) EI service; (2) GI service; (3) regulation and frequency response service (penalty for non-performance); (4) spinning reserve service (penalty for non-performance); and (5) supplemental reserve service (penalty for non-performance).

O. *Comment:* A customer suggested that Western charge any costs incurred under EI and GI, including negative pricing, when disposing of surplus energy to the responsible party.

Response: Pursuant to Western's EI and GI rate schedules, positive deviations (over-delivery), outside the bandwidth, are lost to the system. However, Western agrees with the commenter that Western should charge costs to responsible parties in instances where Western incurs a cost for disposing of surplus energy, and Western will charge accordingly.

P. *Comment:* A customer asked that Western consider reinstating compensation to generators, including Sutter, for reactive power supplied to support the Sacramento region, particularly to the SMUD and Roseville service areas.

Response: Western reviewed the history of removing reactive power from its TRR, analyzed its current operations and FERC comparability rules, and determined that conditions and limitations existing during our Rate Order WAPA–128 filing continue to exist today. Therefore, based on the reasons previously articulated in Western's Rate Order WAPA–128, and to continue to adhere to FERC comparability standards, Western is not changing from its current methodology.

Q. *Comment:* Several customers commented that Western should restructure regulation and frequency response services to be consistent with how services are provided for spinning and supplemental reserves. Customers also commented that CVP generation should not be reserved for a subset of customers, but rather should be made available for all CVP Preference Customers. Alternatively, customers requiring regulation should (1) Use their BR, if available, and (2) if not, Western should procure on their behalf, or (3) those requiring regulation should self-provide.

Response: The marketing of regulation and frequency response service is outside the scope of this rates process. Western will continue to follow the terms of its 2004 Marketing Plan, which states that CVP generation must be adjusted for reserves, as well as other obligations, such as project use and losses, before CVP generation is available for marketing. Western's policy-decision and rate methodology used to recover the cost from entities requiring regulation has been in place since 2005 and has generated annual revenue averaging approximately $1.2 million. That revenue reduces the overall cost in the PRR.

Other Comments

R. *Comment:* A customer commented that Western should include Restoration Fund costs in the generation RR.

Response: Western is a billing agent for Reclamation, and the Restoration Fund is not a part of Western's costs. The billing requirements for the Restoration Fund were set in a separate public process, and thus are outside the scope of this public process.

S. *Comment:* A customer suggested that Western should offer a policy to challenge costs in the Restoration Fund.

Response: Western, as the Restoration Fund billing agent for Reclamation, will continue to work with Reclamation to examine and explain Restoration Fund costs. This and other Restoration Fund comments should be addressed in a Restoration Fund public process and are outside the scope of this public process.

T. *Comment:* A customer suggested that the Restoration Fund be recovered on a moving-average basis to avoid rate shock.

Response: Western, as the billing agent, will continue to work with Reclamation to examine the Restoration Fund. This and other Restoration Fund comments should be addressed in a Restoration Fund public process and are outside the scope of this public process.

Availability of Information

Information about this rate adjustment, including PRS, rate brochure, studies, comments, letters, memorandums, and other supporting material made or kept by Western and

used to develop the provisional formula rates, is available for public review at the SNR office, located at 114 Parkshore Drive, Folsom, California, 95630, or where available at the following *Web site: http://www.wapa.gov/sn/marketing/rates/.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508), and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from further NEPA analysis.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the FERC

The provisional formula rates herein confirmed, approved, and placed into effect, on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm, approve, and place into effect on October 1, 2011, on an interim basis, Rate Order WAPA–156, which includes Rate Schedules CV–F13, CPP–2, CV–T3, CV–NWT5, COTP–T3, PACI–T3, CV–TPT7, CV–UUP1, CV–SPR4, CV–SUR4, CV–RFS4, CV–EID4, and CV–GID1, for the CVP, COTP, and PACI of Western. By this Order, I am placing the rates into effect in less than 30 days to meet contract deadlines, to avoid financial difficulties and to provide a rate for a new service. These rate schedules shall remain in effect on an interim basis pending FERC's confirmation and approval of them or substitute formula rates on a final basis through September 30, 2016, or until superseded.

Dated: September 2, 2011.
Daniel B. Poneman
Deputy Secretary

Rate Schedule CV–F13

(Supersedes Schedule CV–F12)

Central Valley Project

Schedule of Rates For Base Resource and First Preference Power

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

Applicable: To the Base Resource (BR) and First Preference (FP) Power Customers.

Character and Conditions of Service: Alternating current, 60-hertz, three-phase, delivered and metered at the voltages and points established by contract. This service includes the Central Valley Project (CVP) transmission (to include reactive supply and voltage control from Federal generation sources needed to support the transmission service), spinning reserve service, and supplemental reserve service.

Power Revenue Requirement (PRR): Western will develop the PRR prior to the start of each fiscal year (FY). The PRR will be divided in two 6-month periods, October through March and April through September, based on FP and BR percentages. The PRR for the April-through-September period will be reviewed in March of each year. The review will analyze financial data from the October-through-February period, to the extent information is available, as well as forecasted data for the March-through-September period. If there is a change of $5 million or more, the PRR will be recalculated for the entire FY. The PRR is allocated to FP Customers and BR Customers based on formula rates, as adjusted for Hourly Exchange (HE), FP true-up calculation, and midyear adjustments.

EXAMPLE OF PRR ALLOCATION TO FP AND BR

Component	Formula	Allocation
Annual PRR		$70,000,000
FP Customers' Allocation (Total FP % = 5%)	$70,000,000 × 5%	3,500,000
Remaining PRR Allocated to BR	$70,000,000—$3,500,000	66,500,000

Note: This example is intended to show the PRR allocation to the customer groups and is not adjusted for billing, midyear adjustments or FP true-up calculation.

FP Power Formula Rate:

The annual FP customer allocation is equal to the annual PRR multiplied by the relevant FP percentage. The formula rate for FP power has three components.

Component 1:

$$\text{FP Customer Percentage} = \frac{\text{FP Customer Load}}{\text{Gen} + \text{Power Purchases} - \text{Project Use}}$$

$$\text{FP Customer Charge} = \text{FP Customer Percentage} \times \text{MRR}$$

Where:

FP Customer Load = An FP Customer's forecasted annual load in megawatthours (MWh).

Gen = The forecasted annual CVP and Washoe generation (MWh).

Power Purchases = Power purchases for Project Use and FP loads (MWh).

Project Use = The forecasted annual Project Use loads (MWh).

MRR = Monthly PRR.

Western will develop each FP customer's percentage prior to the start of each FY. During March of each FY, each FP customer's percentage will be reviewed. If, as a result of the review, there is a change in a FP customer's percentage of more than one-half of 1 percent, the percentage will be revised for the April-through-September period and billing adjustments made for the October-through-March period to reflect the revised percentage.

TABLE 1—ESTIMATED AND ACTUAL YEAR 1 PRR ALLOCATION DUE TO FP % TRUE-UP

FP Customer	Year 1 FP % (based on estimate)	Year 1 FP and BR PRR allocation	Year 1 actual FP % (determined during year 2)	Year 1 FP and BR actual (adjusted) PRR allocation	Difference (applied in year 3)
Customer A	0.35%	$262,500	0.38%	$285,000	$22,500
Customer B	0.90%	675,000	0.85%	637,500	(37,500)
Customer C	2.80%	2,100,000	2.90%	2,175,000	75,000
Customer D	0.75%	562,500	0.75%	562,500	0
Total	4.80%	3,600,000	4.88%	3,660,000	60,000
BR Customers	Contractual %	71,400,000	Contractual %	71,340,000	(60,000)
Total PRR (Year 1)		75,000,000	Total PRR	75,000,000	0

In addition, Western is adopting a true-up methodology for FP Customers each year in order to ensure FP Customers pay their proportionate share of the PRR. The FP percentage true-up calculation will use actual data for the FY being adjusted. Changes to the PRR based on FP percentage true-up calculations will be incorporated in the PRR at the beginning of each FY as shown in the example below. As shown in the example in Table 1, the total PRR for Year 1, on October 1, is $75 million, and estimated revenue requirements are allocated to customers based on their estimated FP and BR percentages. A true-up of each FP percentage for Year 1 occurs in Year 2 and the difference between the estimated and actual will be reflected in the PRR in Year 3.

Beginning in Year 3, the PRR, as published on October 1, is $73,000,000. Based on the true-up methodology, the adjustment (difference seen in Table 1) from Year 1 is factored in the PRR for Year 3, and payment obligations for both FP and BR Customers are appropriately adjusted as shown in the Table 2 below.

TABLE 2—FP % ADJUSTMENT FROM YEAR 1 (ACTUAL TO ESTIMATED) APPLIED IN YEAR 3

FP customer	Year 3 est. FP %	Year 3 estimated PRR payment	PY FP true-up (year 1 true-up amount)	Total year 3 bill
Customer A	0.35%	$255,500	$22,500	$278,000
Customer B	0.90%	657,000	(37,500)	619,500
Customer C	2.85%	2,080,500	75,000	2,155,500
Customer D	0.77%	562,100	0	562,100
Total	4.87%	3,555,100	60,000	3,615,100
BR Customers	Contractual %	69,444,900	(60,000)	69,384,900
Total PRR (Year 3)		73,000,000	0	73,000,000

Based on the true-up adjustment from Year 1, the adjusted PRR for Year 3 is appropriately allocated to both FP and BR Customers.

The percentages in the table below are the maximum percentages for each FP customer that will be applied to the MRR during the rate period October 1, 2011, through September 30, 2016. The maximum percentages were determined based on a critically dry year where there are hydrologic conditions that result in low CVP generation and, consequently, low levels of BR. An FP percentage cannot exceed the maximum except in instances where individual FP customer percentages increase due to load growth. If these maximum percentages are used for determining the FP customer charges for more than one year, Western will evaluate customer percentages from the formula rate versus the maximum percentage and make adjustments as appropriate.

FP ACTUAL MAXIMUM PERCENTAGES EFFECTIVE RATE PERIOD FY 2012 THROUGH FY 2016

FP customer	Maximum FP customer percentage applied to the MRR percent
Sierra Conservation Center	1.58
Calaveras Public Power Agency	3.81
Trinity Public Utilities District	12.01
Tuolumne Public Power Agency	3.16
Total	20.56

Below is a sample calculation for an FP customer's monthly charge for power.

EXAMPLE: FP MONTHLY CUSTOMER CHARGE CALCULATION

Numerator:	
FP Customer's Load—MWh	10,000
Denominator:	
Washoe Generation—MWh	2,500
CVP Generation—MWh	3,700,000
PU Load—MWh	(1,200,000)
PU Purchase—MWh	47,000
Calculated Percentage:	
FP Customer's Percentage	0.39%
Monthly Power Revenue Requirement (MRR)	$3,333,333
FP Customer Monthly Charge = (FP % x MRR)	$13,000

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

BR Formula Rate: The annual BR allocation is equal to the annual PRR less the annual FP customer allocation. The formula rate for BR has three components.

Component 1:

BR Customer Allocation = (BR RR × BR%)

Where:

BR RR = BR Monthly Revenue Requirement (RR)

BR% = BR percentage for each customer as indicated in the BR contract after adjustments for programs, such as HE, if applicable.

After the FP Customers' share of the annual PRR has been determined, including a prior period true-up from the FP formula rate, the remainder of the annual PRR is recovered from the BR Customers. BR Customers' allocation will also be adjusted by the amount of under- or overpayment by FP Customers. The BR RR will be collected in two 6-month periods. For October through March, 25 percent of the BR RR will be collected. For April through September, 75 percent of the BR RR will be collected. The monthly BR RR is calculated by dividing the BR 6-month RR by six. The revenues from the sale of surplus BR will be applied to the annual BR RR for the following FY.

An example of a reallocation program is the HE program. BR Customers pay for exchange energy, hourly or seasonally, by adjusting the BR percentage that is applied to the BR RR. Adjustments to a customer's BR percentage for seasonal exchanges will be reflected in the customer's BR contract.

An illustration of the adjustment to a customer's BR percentage for HE energy is shown in the example below.

EXAMPLE OF BR PERCENTAGE ADJUSTMENTS FOR HE ENERGY

BR Customer	BR % from contract	Hourly BR = 30 MWh	Customer's BR > load	Customers receiving HE	BR delivered (adj'd for HE)	Revised BR %
Customer A	20%	6	3	0	3	10.0%
Customer B	10%	3	0	1	4	13.3%
Customer C	70%	21	0	2	23	76.7%
Total	100%	30	3	3	30	100.0%

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: Billing for BR and FP power will occur monthly using the respective formula rate. Any adjustment made at midyear is applicable to the entire FY and billed over the remainder the FY.

Adjustment for Losses: Losses will be accounted for under this rate schedule as stated in the service agreement.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CPP–2

(Supersedes Schedule CPP–1)

Central Valley Project

Schedule of Rates for Custom Product Power

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

Applicable: To customers that contract with Western for Custom Product Power (CPP).

To Variable Resources (VR) Customers requesting scheduling for this service. VR Customers will pay a scheduling charge to recover Western's cost for scheduling VR CPP service.

Character and Conditions of Service: Alternating current, 60-hertz, three-phase, delivered and metered at the voltages and points established by contract, in accordance with approved policies and procedures.

Formula Rate: The formula rate for CPP includes three components:

Component 1: The customer will pay all costs incurred in the provision of CPP. These costs will be passed through to the customer. The methodology used to calculate the amount of the pass through will be based on the type of funding used to purchase the CPP. The CPP includes, but is not limited to, supplemental power and Base Resource (BR) firming power. If in the event customer advance funding is used to purchase CPP, then allocation of surplus CPP sales will be determined based on customer's account status.

If the CPP is funded through appropriations, Federal reimbursable, or use of receipts authority, the cost of the CPP is passed through to the customer(s) for whom Western has made the purchase. The CPP funded through appropriations, Federal reimbursable, or use of receipts authority that is surplus to the load requirements of the customer(s) will be sold. Proceeds from the sale of surplus CPP funded through use of receipts, Federal reimbursable, or appropriations authority will be applied to the CPP purchase cost for the customer(s) to the extent possible. If the cost of the CPP is fully recovered and proceeds remain from the sale of surplus CPP, the remaining proceeds will be used to reduce the Power Revenue Requirement (PRR).

The table below illustrates the pass through of the CPP costs to each customer and the treatment of proceeds from the sale of surplus CPP funded through appropriations, Federal reimbursable, or use of receipts authority. As shown below, customers A, B, and C are responsible for paying the full costs of the CPP purchase made by Western (total CPP revenue requirement (RR) is $780). The CPP RR of $780 is reduced by the sale of 1 megawatthour (MWh) at $45, which reduces the CPP RR to $735. Therefore, the reduced CPP RR of $735 is prorated to each customer based on the amount of CPP purchased on their behalf.

EXAMPLE: CPP COST RECOVERY WITH PROCEEDS FROM SALES OF SURPLUS CPP USE OF RECEIPTS, FEDERAL REIMBURSABLE, OR APPROPRIATIONS AUTHORITY

If Western made a CPP purchase of 13 MW for the hour @ $60/MWh = $780

	CPP Purchased (MWh)	CPP USED (MWh)	CPP costs	Surplus CPP sold	Proceeds from excess CPP sales	CPP customer charges
Customer A	5	5		0		$283
Customer B	4	4		0		226
Customer C	4	3		1		226
Total	13	12	$780	1	$45	735

NOTES:
1. Western sold 1 MWh of CPP at $45/MWh = $45.
2. Proceeds from the sale of surplus CPP reduce the CPP costs prorated based on the amount of CPP purchased.

Effective October 1, 2011, Western will charge $37.91 per schedule per day to cover its administrative costs for procuring and scheduling CPP if the customer has not contracted with Western for this type of service through other agreements. If the actual number of schedules for the month is not available, Western will estimate the number of schedules for the month and apply the $37.91 per schedule charge to the estimated number of schedules.

The table below depicts the VR scheduling charge per schedule for the effective rate period.

VR SCHEDULING CHARGE (PER SCHEDULE) EFFECTIVE RATE FY 2012 THROUGH FY 2016

FY	2012	2013	2014	2015	2016
VR Scheduling Charge Per Schedule	$37.91	$39.04	$40.21	$41.42	$42.66

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: Billing for CPP and VR scheduling charge occurs monthly using the formula rate.

Adjustments for Losses: All losses incurred for delivery of CPP under this rate schedule shall be the responsibility of the customer that has contracted for this service.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–T3

(Supersedes Schedules CV–T2)

Central Valley Project

Schedule of Rate for Point-to-Point Transmission Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

Applicable: To customers receiving Central Valley Project (CVP) firm and/or non-firm Point-to-Point (PTP) transmission service.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60-hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling and system control and dispatch service needed to support the transmission service.

Formula Rate: The formula rate for CVP firm and non-firm PTP transmission includes three components:

Component 1:

CVP Transmission Revenue Requirement (TRR)
Total Transmission Capacity (TTc) + Network Integration Transmission Service Capacity (NITSc)

Where:

CVP TRR = TRR is the cost associated with facilities that support the transfer capability of the CVP transmission system excluding generation facilities and radial lines.

TTc = The TTc is the total transmission capacity under a long-term contract between Western and other parties.

NITSc = The NITSc is the 12-month average coincident peaks of Network Integrated Transmission Service (NITS) customers at the time of the monthly CVP transmission system peak. For rate design purposes, Western's use of the transmission system to meet its statutory obligations is treated as NITS.

Western may revise the rate from Component 1 based on either of the following conditions: (1) Updated financial data available in March of each year; or (2) a change in the numerator or denominator that results in a rate change of at least $0.05 per kilowatt month (kW month). Rate change notifications will be posted on Western's Open Access Same-Time Information System.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: The formula rate above applies to the maximum amount of capacity reserved for periods ranging from 1 hour to 1 month, payable whether used or not. Billing will occur monthly.

Adjustment for Losses: Losses incurred for service under this rate schedule will be accounted for as agreed to by the parties in accordance with the service agreements.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–NWT5

(Supersedes Schedule CV–NWT4)

Central Valley Project

Schedule of Rate for Network Integration Transmission Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

Applicable: To customers receiving Central Valley Project (CVP) Network Integration Transmission Service (NITS).

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60-hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling and system control and dispatch service needed to support the transmission service.

Formula Rate: The formula rate for CVP NITS includes three components:

Component 1: The NITS revenue requirement equals the CVP transmission revenue requirement (TRR) less the CVP firm point-to-point revenue. Each NITS customer's allocation is based on the following formula:

NITS customer's monthly demand charge = NITS customer's load ratio share × 1/12 of the Annual Network TRR.

Where:

NITS customer's load ratio share = The NITS customer's load, hourly, or in accordance with approved policies or procedures, (including behind the meter generation minus the NITS customer's adjusted Base Resource) coincident with the monthly CVP transmission system peak, averaged over a 12-month rolling period, expressed as a ratio.

Annual Network TRR = The total CVP TRR less revenue from long-term contracts for the CVP transmission between Western and other parties.

The Annual Network TRR will be revised when the formula rate from Component 1 of the CVP Transmission Rate under Rates Schedule CV–T3 is revised.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies'

accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: NITS will be billed monthly under the formula rate.

Adjustment for Losses: Losses incurred for service under this rate schedule will be accounted for as agreed to by the parties in accordance with the service agreement.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule COTP–T3

(Supersedes Schedule COTP–T2)

California-Oregon Transmission Project

Schedule of Rate for Point-to-Point Transmission Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

Applicable: To customers receiving California-Oregon Transmission Project (COTP) firm and/or non-firm point-to-point (PTP) transmission service.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60-hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling and system control and dispatch service needed to support the transmission service.

Formula Rate: The formula rate for COTP firm and non-firm PTP transmission service includes three components:

Component 1:

COTP Transmission Revenue Requirement (TRR)
Western's COTP Seasonal Capacity

Where:

COTP TRR = COTP Seasonal TRR (Western's costs associated with facilities that support the transfer capability of the COTP).

Western's COTP Seasonal Capacity = Western's share of COTP capacity (subject to curtailment) under the current California-Oregon Intertie (COI) transfer capability for the season. The three seasons are defined as follows: Summer—June through October; Winter—November through March; and Spring—April through May.

Western will update the rate from Component 1 for COTP firm and non-firm PTP transmission service at least 15 days before the start of each COI rating season. Rate change notifications will be posted on Western's Open Access Same-Time Information System Web site.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: The formula rate above applies to the maximum amount of capacity reserved for periods ranging from 1 hour to 1 month, payable whether used or not. Billing will occur monthly.

Adjustment for Losses: Losses incurred for service under this rate schedule will be accounted for as agreed to by the parties in accordance with the service agreement.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule PACI–T3

(Supersedes Schedule PACI–T2)

Pacific Alternating Current Intertie Project

Schedule of Rate For Point-to-Point Transmission Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region (SNR).

Applicable: To customers receiving Pacific Alternating Current Intertie (PACI) firm and/or non-firm point-to-point transmission service.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60-hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling and system control and dispatch service needed to support the transmission service.

Formula Rate: The formula rate for PACI firm and non-firm transmission includes three components:

Component 1:

PACI Transmission Revenue Requirement (TRR)
Western's PACI Seasonal Capacity

Where:

PACI TRR = PACI Seasonal TRR includes Western's costs associated with facilities that support the transfer capability of the PACI.

Western's PACI Seasonal Capacity = Western's share of PACI capacity (subject to curtailment) under the current California-Oregon Intertie (COI) transfer capability for the season. The three seasons are defined as follows: Summer—June through October; Winter—November through March; and Spring—April through May.

Western will update the rate resulting from Component 1 at least 15 days before the start of each COI rating season. Rate change notifications will be posted on Western's Open Access Same Time Information System.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: The formula rate above applies to the maximum amount of capacity reserved for periods ranging from 1 hour to 1 month, payable whether used or not. Billing will occur monthly.

Adjustment for Losses: Losses incurred for service under this rate schedule will be accounted for as agreed to by the parties in accordance with the service agreement.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–TPT7

(Supersedes Schedule CV–TPT6)

Central Valley Project

Schedule of Rate for Transmission of Western Power by Others

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

Applicable: To Western's power service customers who require transmission service by a third party to receive power sold by Western.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60-hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points as agreed to by the parties.

Formula Rate: The formula rate for transmission of Western's power by others includes three components.

Component 1: When Western uses transmission facilities other than its own in supplying Western power and costs are incurred by Western for the use of such facilities, the customer will pay all costs, including transmission losses, incurred in the delivery of such power.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: Third-party transmission will be billed monthly under the formula rate.

Adjustments for losses: All losses incurred for delivery of power under this rate schedule will be the responsibility of the customer that received the power.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

New Rate Schedule CV–UUP1

Central Valley Project

Schedule of Rate for Unreserved Use Penalties

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region (SNR).

Applicable: Western added this penalty rate for unreserved use of transmission service for the Central Valley Project, California-Oregon Transmission Project, and Pacific Alternating Current Intertie effective October 1, 2011. This penalty is applicable to point-to-point (PTP) transmission customers using transmission not reserved or in excess of reservation or network customers when they schedule delivery of off-system non-designated purchases using transmission capacity reserved for designated network resources.

Character and Conditions of Service: Transmission service for three-phase,

alternating current at 60-hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling and system control and dispatch service needed to support the transmission service.

Penalty Rate: The formula rate for Unreserved Use Penalty (UPP) has three components.

Component 1: The UUP service is provided when a transmission customer uses transmission service that it has not reserved or uses transmission service in excess of its reserved capacity. A transmission customer that has not reserved capacity or exceeds its firm or non-firm reserved capacity at any point of receipt or any point of delivery will be assessed UUP.

The penalty charge for a transmission customer who engages in unreserved use is 200 percent of Western's approved transmission service rate for PTP transmission service assessed as follows: (1) The UUP for a single hour of unreserved use will be based upon the rate for daily firm PTP service; (2) the UUP for more than one assessment for a given duration (*e.g.,* daily) will increase to the next longest duration (weekly); and (3) the UUP for multiple instances of unreserved use (*e.g.,* more than 1 hour) within a day will be based on the rate for daily firm PTP service. The penalty charge for multiple instances of unreserved use isolated to one-calendar week would result in a penalty based on the charge for weekly firm PTP service. The penalty charge for multiple instances of unreserved use during more than one week within a calendar month is based on the charge for monthly firm PTP service.

The UUP will not apply to transmission customers utilizing PTP transmission service under Western's Open Access Transmission Tariff (OATT) as a result of action taken to support reliability. Such actions include reserve activations or uncontrolled event response as directed by the responsible reliability authority such as Sub-Balancing Authority, Host Balancing Authority (HBA), Reliability Coordinator, or Transmission Operator.

A transmission customer that exceeds its firm or non-firm reserved capacity is required to pay for all ancillary services identified in Western's OATT associated with the unreserved use of transmission service. The transmission customer or eligible customer will pay for ancillary services, in accordance with existing rate schedules, based on the amount of transmission service it used but did not reserve.

The UUP collected over and above the base PTP rate will be distributed to customers as a credit on future transmission revenue requirements.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the penalty rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the penalty rate.

Billing: The UUP will be billed monthly under the formula rate.

Adjustments for losses: All losses incurred for delivery of power under this rate schedule shall be the responsibility of the customer that received the power.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–SPR4

(Supersedes Schedule CV–SPR3)

Central Valley Project

Schedule of Rate for Spinning Reserve Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

Applicable: To customers receiving spinning reserve service.

Character and Conditions of Service: Spinning reserve service supplies capacity that is available immediately to serve load and is synchronized with the power system.

Formula Rate: The formula rate for spinning reserve includes three components:

Component 1: The formula rate for spinning reserve service is the price consistent with the California Independent System Operator's market plus all costs incurred as a result of the sale of spinning reserves, such as Western's scheduling costs.

For customers that have a contractual obligation to provide spinning reserve to Western and do not fulfill that obligation, the penalty for non-performance is the greater of 150 percent of Western's actual cost or 150 percent of the market price.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: The formula rate above will be applied to the amount of spinning reserve sold. Billing will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate

treatment for repayment and cash flow management.

Rate Schedule CV–SUR4

(Supersedes Schedule CV–SUR3)

Central Valley Project

Schedule of Rate for Supplemental Reserve Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

Applicable: To customers receiving supplemental reserve service.

Character and Conditions of Service: Supplemental reserve service supplies capacity that is available within the first 10 minutes to take load and is synchronized with the power system.

Formula Rate: The formula rate for supplemental reserve service includes three components:

Component 1: The formula rate for supplemental reserve service is the price consistent with the California Independent System Operator's market plus all costs incurred as a result of the sale of supplemental reserves, such as Western's scheduling costs.

For customers that have a contractual obligation to provide supplemental reserve service to Western and do not fulfill that obligation, the penalty for non-performance is the greater of 150 percent of Western's actual cost or 150 percent of the market price.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: The formula rate above will be applied to the amount of supplemental reserve service sold. Billing will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–RFS4

(Supersedes Schedule CV–RFS3)

Central Valley Project

Schedule of Rate for Regulation and Frequency Response Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

Applicable: To customers receiving Regulation and Frequency Response Service (regulation).

Character and Conditions of Service: Regulation is necessary to provide for the continuous balancing of resources and interchange with load and for maintaining scheduled interconnection frequency at 60-cycles per second.

Formula Rate: The formula rate for regulation includes three components:

Component 1:

Annual Revenue Requirement

Annual Regulating Capacity (Kilowatt(kW))

The annual revenue requirement includes: (1) The Central Valley Project generation costs associated with providing regulation, and (2) the non-facility costs allocated to regulation.

The annual regulating capacity is one-half of the total regulating capacity bandwidths provided by Western under the Interconnected Operations Agreements with Sub-Balancing Authority (SBA) members.

The penalty for non-performance by an SBA customer who has committed to self-provision for their regulating capacity requirement will be the greater of 150 percent of Western's actual costs or 150 percent of the market price.

Western will revise the formula rate resulting from Component 1 based on either of the following two conditions: (1) Updated financial data available in March of each year; or (2) a change in the numerator or denominator that results in a rate change of at least $0.25 per kW month.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: The formula rate above will be applied to the regulating capacity bandwidth contained in the service agreement. Billing will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-

case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Schedule CV–EID4

(Supersedes Schedule CV–EID3)

Central Valley Project

Schedule of Rate for Energy Imbalance Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

Applicable: To customers receiving Energy Imbalance (EI) service.

Character and Conditions of Service: EI is provided when a difference occurs between the scheduled and the actual delivery of energy to a load within the Sub-Balancing Authority (SBA) over an hour or in accordance with approved policies and procedures. The deviation, in megawatts, is the net scheduled amount of energy minus the net metered (actual delivered) amount.

EI service uses the deviation bandwidth that is established in the service agreement or Interconnected Operations Agreements.

Formula Rate: The formula rate for EI service includes three components:

Component 1: EI service is applied to deviations as follows: (1) For deviations within the bandwidth, there will be no financial settlement, unless otherwise dictated by contract or policy; rather, EI will be tracked and settled with energy; (2) negative deviations (under-delivery), outside the deviation bandwidth, will be charged the greater of 150 percent of the California Independent System Operator market price or 150 percent of Western's actual cost; and (3) positive deviations (over-delivery), outside the deviation bandwidth, will be lost to the system, except for any hour when Western incurs a cost to dispose of the energy, then that cost will be borne by the responsible party.

Deviations that occur as a result of actions taken to support reliability will be resolved in accordance with existing contractual requirements. Such actions include reserve activations or uncontrolled event responses as directed by the responsible reliability authority such as SBA, Host Balancing Authority (HBA), Reliability Coordinator, or Transmission Operator.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: Billing for negative deviations outside the bandwidth, or as otherwise required, will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

New Rate Schedule CV–GID1

Central Valley Project

Schedule of Rate for Generator Imbalance Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region (SNR).

Applicable: To generators receiving Generator Imbalance Service (GI).

Character and Conditions of Service: GI is provided when a difference occurs between the scheduled and actual delivery of energy from an eligible generation resource within the Sub-Balancing Authority (SBA), over an hour, or in accordance with approved policies. The deviation in megawatts is the net scheduled amount of generation minus the net metered output from the generator's (actual generation) amount.

GI is subject to the deviation bandwidth established in the service agreement or Interconnected Operations Agreements.

Formula Rate: The formula rate for the GI has three components:

Component 1: GI is applied to deviations as follows: (1) For deviations within the bandwidth, there will be no financial settlement, unless otherwise dictated by contract or policy; rather, GI will be tracked and settled with energy; (2) negative deviations (under-delivery), outside the deviation bandwidth, will be charged the greater of 150 percent of the California Independent System Operator market price or 150 percent of Western's actual cost; and (3) positive deviations (over-delivery), outside the deviation bandwidth, will be lost to the system, except for any hour when Western incurs a cost to dispose of the energy, then that cost will be borne by the responsible party.

Deviations that occur as a result of actions taken to support reliability will be resolved in accordance with existing contractual requirements. Such actions include reserve activations or uncontrolled event responses as directed by the responsible reliability authority such as Sub-Balancing Authority, Host Balancing Authority (HBA), Reliability Coordinator, or Transmission Operator.

To the extent that an entity incorporates intermittent resources, deviations will be charged as follows: (1) For deviations within the bandwidth, there will be no financial settlement, unless otherwise dictated by contract or policy; rather, GI will be tracked and settled with energy; (2) negative deviations (under-delivery), outside the deviation bandwidth, will be charged the greater of market price or actual cost (no penalty); and (3) positive deviations (over-delivery), outside the deviation bandwidth, will be lost to the system, except for any hour where Western incurs a cost, then that cost will be borne by the responsible party.

Intermittent generators serving load outside of SNR's SBA will be required to dynamically schedule or dynamically meter their generation to another Balancing Authority. An intermittent resource, for the limited purpose of these rate schedules, is an electric generator that is not dispatchable and cannot store its output, and therefore, cannot respond to changes in demand or respond to transmission security constraints.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed

on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: Billing for negative deviations outside the bandwidth will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

[FR Doc. 2011–23339 Filed 9–13–11; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 76 Wednesday,
No. 178 September 14, 2011

Part IV

The President

Proclamation 8708—National Days of Prayer and Remembrance, 2011
Proclamation 8709—National Grandparents Day, 2011
Proclamation 8710—Patriot Day and National Day of Service and Remembrance, 2011

Federal Register
Vol. 76, No. 178
Wednesday, September 14, 2011

Presidential Documents

Title 3—

The President

Proclamation 8708 of September 9, 2011

National Days of Prayer and Remembrance, 2011

By the President of the United States of America

A Proclamation

Ten years ago, a bright September day was darkened by the worst terrorist attack on America in our Nation's history. On this tenth anniversary of the tragic events of September 11, 2001, we lift in prayer and remembrance the men, women, and children who died in New York City, in Pennsylvania, and at the Pentagon, and we honor the countless heroes who responded to senseless violence with courage and compassion. We continue to stand with their families and loved ones, while striving to ensure the legacy of those we lost is a safer, stronger, and more resilient Nation.

Since that day, a generation has come of age bearing the burden of war. The 9/11 Generation of service members and their families has stepped up to defend our security at home and abroad. They volunteer, knowing they might be sent into harm's way, and they uphold the virtues of selflessness and sacrifice that have always been at the center of our Nation's strength. We pay humble tribute to all those who serve in our Armed Forces, and to the thousands of brave Americans who have given their last full measure of devotion during this difficult decade of war.

First responders, law enforcement officials, service members, diplomats—the range of Americans who have dedicated themselves to building a safer world is awe-inspiring. We have put unprecedented pressure on those who attacked us 10 years ago and put al-Qa'ida on the path to defeat. Around the globe, we have joined with allies and partners to support peace, security, prosperity, and universal rights. At home, communities have come together to make us a stronger country, united by our diversity, our character, and our enduring principles.

Today, our Nation still faces great challenges, but this last decade has proven once more that, as a people, we emerge from our trials stronger than before. During these days of prayer and remembrance, a grateful Nation gives thanks to all those who have given of themselves to make us safer. And in memory of the fathers and mothers, sons and daughters, brothers and sisters, and friends and loved ones taken from us 10 years ago, let us join again in common cause to build a more hopeful world.

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 Friday, September 9 through Sunday, September 11, 2011, as National Days of Prayer and Remembrance. I ask that the people of the United States honor and remember the victims of September 11, 2001, and their loved ones through prayer, contemplation, memorial services, the visiting of memorials, the ringing of bells, evening candlelight remembrance vigils, and other appropriate ceremonies and activities. I invite people around the world to participate in this commemoration.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, 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.

[FR Doc. 2011–23744
Filed 9–13–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8709 of September 9, 2011

National Grandparents Day, 2011

By the President of the United States of America

A Proclamation

The support of loved ones provides the earliest and often most powerful influence on our lives. Grandparents hold a special place in our families, serving as elders, caregivers, and sources of lasting inspiration. On National Grandparents Day, we honor the loving presence of these mentors who have contributed immeasurably to the strength of our families and our Nation.

As a country, we understand our welfare is determined by that of all Americans, and it is our responsibility to provide for our grandparents as they have for us. We must keep Social Security strong and viable, while preserving it for future generations. We must strengthen Medicare by making commonsense changes that encourage high-quality care and address wasteful spending. After a lifetime of contributions to our Nation and its economy, seniors have earned this support.

Today, our grandparents continue to serve their communities in many ways. Their spirit of service and warm guidance instill in each of us the values of community and compassion and inspire all of us to reach for ever greater heights.

The greatest generation built America into a global force for prosperity, opportunity, and freedom. They taught us that with hard work, sacrifice, and a determined spirit, anything is possible. Today, we honor their contributions to our Nation and its proud story.

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 September 11, 2011, as National Grandparents Day. I call upon all Americans to take the time to honor their own grandparents and those in their community.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, 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.

[FR Doc. 2011–23745
Filed 9–13–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8710 of September 9, 2011

Patriot Day and National Day of Service and Remembrance, 2011

By the President of the United States of America

A Proclamation

In the aftermath of the terrorist attacks of September 11, 2001, the American people demonstrated that in times of hardship, the values that define us do not simply endure—they are stronger than ever. As a Nation, we responded to unthinkable tragedy with an outpouring of service and goodwill. On that dark day, first responders rushed into a burning Pentagon and climbed the stairs of smoking towers on the verge of collapse, while citizens risked their own health and safety to prevent further heartbreak and destruction. As Americans, we came together to help our country recover and rebuild.

Today, we pay tribute to the selfless heroes and innocent victims of September 11, 2001, and we reaffirm the spirit of patriotism, service, and unity that we felt in the days and months that followed. By volunteering our time and unique skills, we can enrich communities across our country, and together, we can strengthen our Nation to meet the challenges of the 21st century.

In the days to come, I ask all Americans to join together in serving their communities and neighborhoods in honor of the victims of the September 11 attacks. Today and throughout the year, scores of Americans answer the call to make service a way of life—from helping the homeless to teaching underserved students to bringing relief to disaster zones. I encourage all Americans to visit Serve.gov, or Servir.gov for Spanish speakers, to learn more about service opportunities across our country.

As we join in serving causes greater than ourselves and honoring those we lost, we are reminded of the ways that the victims of 9/11 live on—in the people they loved, the lives they touched, and the courageous acts they inspired. On Patriot Day and National Day of Service and Remembrance, we pledge to carry on their legacy of courage and compassion, and to move forward together as one people.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as ''Patriot Day,'' and by Public Law 111–13, approved April 21, 2009, the Congress has requested the observance of September 11 as an annually recognized ''National Day of Service and Remembrance.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 11, 2011, as Patriot Day and National Day of Service and Remembrance. I call upon all departments, agencies, and instrumentalities of the United States to display the flag of the United States at half-staff on Patriot Day and National Day of Service and Remembrance in honor of the individuals who lost their lives on September 11, 2001. I invite the Governors of the United States and the Commonwealth of Puerto Rico and interested organizations and individuals to join in this observance. I call upon the people of the United States to participate in community service in honor of those our Nation lost, to observe this

day with appropriate ceremonies and activities, including remembrance services, and to observe a moment of silence beginning at 8:46 a.m. Eastern Daylight Time to honor the innocent victims who perished as a result of the terrorist attacks of September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, 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.

[FR Doc. 2011–23746
Filed 9–13–11; 11:15 am]
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H.R. 2553/P.L. 112–27
Airport and Airway Extension Act of 2011, Part IV (Aug. 5, 2011; 125 Stat. 270)

H.R. 2715/P.L. 112–28
To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes. (Aug. 12, 2011; 125 Stat. 273)

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